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The Realist Turn

Repositioning Liberalism

Douglas B. Rasmussen
Douglas J. Den Uyl

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Palgrave Studies in Classical Liberalism

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Douglas B. Rasmussen • Douglas J. Den Uyl

The Realist Turn

Repositioning Liberalism

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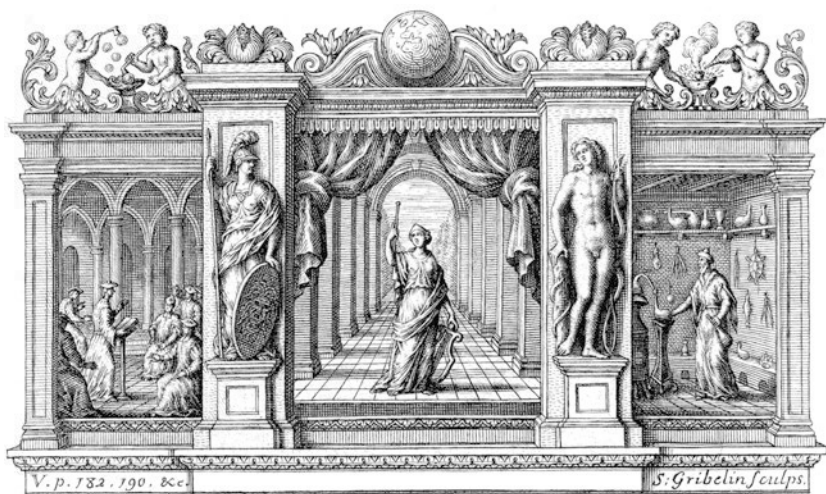
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...it has been actually under deliberation how to make *Man*, by other Mediums than Nature has hitherto provided. Every Sect has a *Recipe*

Shaftesbury, Frontispiece to *The Moralists*

The least initial deviation from the truth is multiplied later a thousandfold.
—Aristotle

*To our mentor, Henry B. Veatch, and to our partners, Pamela and
Margarita*

PREFACE

This book is the culmination of what has become, for us, a trilogy that started with *Norms of Liberty: A Perfectionist Basis for Non-Perfectionist Politics* (University Park: Pennsylvania State University Press, 2005) [hereinafter *NOL*] and was followed by *The Perfectionist Turn: From Metanorms to Meta-Ethics* (Edinburgh: Edinburgh University Press, 2016) [hereinafter *TPT*]. These works,¹ the central points of which we will repeatedly make use in what is to follow, provide the context for this book and the basis for our interest in and concern with metaphysical realism.

Metaphysical realism involves both an ontological and an epistemological thesis—namely, that there are beings that exist and are what they are apart from our cognition of them and that we can know both the existence and nature of these beings. We hold that metaphysical realism is vital both for arguing that individual human beings have basic, negative, natural rights to life, liberty, and property, which was the essential claim of *NOL*, and for providing a non-reductive naturalistic account of human good, which we termed “individualistic perfectionism” and defended in *TPT*. We will here, however, primarily be concerned with showing the importance of metaphysical realism for natural rights. So, we will in the first five chapters not only explain and uphold the natural rights we spoke of above, but

¹ Other important works of ours that provide a basis for our interest in metaphysical realism are: Douglas B. Rasmussen and Douglas J. Den Uyl, *Liberty and Nature: An Aristotelian Defense of Liberal Order* (La Salle, IL: Open Court, 1991); and Douglas B. Rasmussen and Douglas J. Den Uyl, “*Norms of Liberty: Challenges and Prospects*,” in Aeon Skoble, ed., *Reading Rasmussen and Den Uyl: Critical Essays on Norms of Liberty* (Lanham, MD: Lexington Books, 2008), pp. 177–244.

also show why metaphysical realism is important for these rights. The concern of the remaining chapters will be to elucidate and defend metaphysical realism against some of the major contemporary objections to it.

We start, however, with a question that in the last few years has come into clear focus for us: why is there a reluctance among contemporary classical liberals and libertarians to defend their championing of negative liberty in terms of natural rights? For us, natural rights are a good starting point, not simply because of our investment in their consideration in other works, but more importantly because natural rights—of themselves—suggest realism. They do so because they suggest a standard that exists independently of our desires, wishes, and constructs. Thus, natural rights can provide a means to more concretely seeing the value of, and need for, metaphysical realism. We believe that by starting with a more familiar concept of natural rights, the value of realism becomes more salient. Finally, perhaps the concept that most unifies the three parts of our trilogy is natural rights.

Because of all this, Chap. 1 begins by noting the apparent abandonment of natural rights language within a tradition typically associated with it—namely classical liberalism and libertarianism. After examining the approaches that defend these political philosophies without much recourse to natural rights, we conclude with some questions about the viability of the natural rights approach, which we address in various ways throughout the remaining chapters. Chapter 2 begins this process by summarizing the doctrine of natural rights that we have developed elsewhere as a means of defining the scope and nature of natural rights. Chapter 3 then follows by relating natural rights to ethical principles, but opens with a discussion of the nature of such principles themselves and their relationship to practices. In Chap. 4 we consider various objections to the natural rights idea and give our responses to them. Having surveyed the scope and nature of natural rights, we begin moving to a defense of the realist context in which we believe natural rights can both be defended and understood. Hence, Chap. 5 is a segue into doing just that. It examines the views of Alasdair MacIntyre who identifies with the same neo-Aristotelian-Thomistic tradition as we do, but who is opposed to natural rights, especially as they are used in the liberal political tradition. Our discussion there allows us to begin focusing directly on metaphysical realism in Chaps. 6 and 7. There we look at criticisms of realism, giving special attention to the views of Hilary Putnam. In Chap. 6, we argue that Putnam's rejection of realism as foundational for ethical knowledge does not succeed and that the

connection between realism and ethical knowledge, if successful, generally would help to provide a solid context for natural rights. In Chap. 7, then, our attention is devoted exclusively to the viability of metaphysical realism in light of criticisms of it. Finally, in Chap. 8, we return to the realm of political philosophy by considering the issue of ideal versus non-ideal theory—an issue not only of current debate, but one which might benefit from our understanding of natural rights. All of this work goes generally to a point we made in *TPT*—namely, that political theories are tethered to metaphysical predispositions either explicitly or by tacit smuggling. We are of the mind to make ours explicit.

Indeed, we contend that it is only by recognizing and defending these deeper metaphysical presuppositions that contemporary classical liberal and libertarian theorists can (1) show the relevance of their ideals (and the principles by which they achieve them) for the current political scene and (2) avoid a crisis of identity when it comes to characterizing liberty and defending its primacy. More fundamentally stated, the issue is simply that, despite the anti-metaphysical tenor of our times, an understanding and defense of liberty, as well a demonstration of its relevance to our current problems, does not lie in rejecting metaphysics, but in developing and defending a metaphysics that is most congenial to natural rights. We argue that this is metaphysical realism.

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CHAPTER 1

Whence Natural Rights?

Individual rights are the means of subordinating society to moral law.
Ayn Rand

In his essay “The Poverty of Natural Rights Libertarianism,” Brink Lindsey opens by telling a story about how libertarianism has long been rooted in natural rights, specifically those of self-ownership and property.¹ Lindsey might also have noted that natural rights were at the core of classical liberalism, at least the classical liberalism that followed the Lockean tradition. While this lack of notice might suggest that natural rights as they are understood in the classical liberal tradition are apparently not as impoverished as those advocated by libertarians, natural rights are not supposed to be the sort of things that can be given different understandings under different ideologies or schools within an ideology.² As Jefferson noted, these rights are supposed to be “self-evident” and “unalienable.” If so, then the “poverty” about which Lindsey speaks must be due to the libertarianism,

¹ Brink Lindsey, “The Poverty of Natural Rights Libertarianism,” May 4, 2017, www.libertarianism.org/columns/poverty-natural-rights-libertarianism.

² This is not to say that there cannot be different interpretations of the ways to respect or implement natural rights.

rather than the natural rights,³ and “natural rights” has become adjectival, identifying a type of libertarianism, rather than standing on its own as a moral truth.

Lindsey, however, is certainly onto something here.⁴ Recent decades have shown libertarians—at least those in the academy—to be abandoning the natural rights tradition in favor of what Jason Brennan, following Michael Huemer, calls “non-ideal, non-theory.”⁵ Here the kind of foundational natural rights approach taken traditionally is gutted or eschewed completely. It is interesting in this regard that in an otherwise useful essay on recent work in libertarianism, Brennan seems to go out of his way *not* to connect the leading libertarian rights theorist—Robert Nozick—with the term “rights,” preferring instead to talk about Nozick’s libertarian theory of justice.⁶ But Lindsey is correct. Traditionally, libertarianism, as did classical liberalism, saw itself as grounded in a natural rights tradition. That has since changed, as Brennan’s survey piece suggests. The weakening of the natural rights approach certainly began with reflections upon, and criticisms of, Nozick’s work, as well as through the influence and effects of Rawls in the world of political philosophy.⁷ But the real undoing of natural rights as a foundation for libertarianism might have more to do

³ It should be noted that the challenge to speaking of a natural right or natural rights has been going on for decades. See, for example, the introduction to Leo Strauss’s *Natural Right and History* (Chicago: University of Chicago, 1953).

⁴ See also Tyler Cowen, “What Libertarianism has Become and Will Become—State Capacity Libertarianism,” *Marginal Revolution* (January 1, 2020) for what may be an example of what libertarianism becomes when it moves away from natural rights, <https://marginalrevolution.com/marginalrevolution/2010/01/what-libertarianism-has-become-and-will-become-state-capacity-libertarianism.html>. For an understanding of “state capacity” that we would endorse, see Peter J. Boettke and Rosolino A. Candela, “Productive Specialization, Peaceful Cooperation and the Problem of the Predatory State: Lessons from Comparative Historical Political Economy,” *Public Choice* 182 (2020): 331–52, <https://doi.org/10.1007/s11127-019-00657-9>.

⁵ Jason Brennan, “Libertarianism after Nozick,” *Philosophy Compass* (January 2018): 3, <https://doi.org/10.1111/phc3.12485>. Brennan himself seems to endorse, along with John Tomasi, a limited kind of ideal theory; but it is not one rooted in natural rights.

⁶ The opening line of *Anarchy, State and Utopia* goes: “Individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do.” (New York: Basic Books, 1974, p. ix). For the time being, this will serve as a good identification of what can be said of a “natural right.”

⁷ Important exceptions to this generalization are the work of Eric Mack and, to some extent, that of Loren Lomasky.

with epistemology, methodology, and metaphysics than with political philosophy per se. That is something we shall explore in the work that follows.

These changes in tone about natural rights are exemplified, for example, with the work of David Schmidtz and John Tomasi. In Schmidtz's 2006 book, *The Elements of Justice*,⁸ there are no index entries for "natural rights" or even for "rights." There is, however, an entry about "property rights" and more significantly a brief discussion of what appears to be an indirect utilitarian justification, as contrasted to Nozick's, for rights.⁹ Clearly, then, this is something quite different from the traditional approach of starting with natural rights that is being advanced here.¹⁰ Tomasi's 2012 book, *Free Market Fairness*,¹¹ also has no entry for "natural rights" or "rights," though he has a large number of entries for "property rights" and one for "natural property right." Tomasi, too, clearly rejects the traditional natural rights libertarian foundation which sees those rights as negative and in the service of limiting state action.¹² His "market democracy" approach is meant to advance beyond the traditional natural rights foundations through a recognition of their inadequacies. By the time we get to Jacob Levy's work, only three years later, rights in the sense captured by a term like "natural rights" is essentially gone. We are told that the two liberalisms with which Levy is working "are not primarily theories of rights."¹³ Instead, they are approaches to moral and political issues that describe prototypes of liberal theories, rather than philosophical accounts of the nature and foundations of those theories.

⁸ David Schmidtz, *Elements of Justice* (Cambridge: Cambridge University Press, 2006).

⁹ Ibid., pp. 205–06. We shall consider what seems to be Schmidtz's justification for rights in Chap. 4 when we consider the objection "The Irrelevance of Natural Rights."

¹⁰ A few years earlier, the stage was somewhat set for the movement away from natural rights in the important book by Chandran Kukathas, *The Liberal Archipelago: A Theory of Diversity* (Oxford: Oxford University Press, 2003). Kukathas notes that "the primary question of *politics* is not about justice or rights, but about power, who may have it, and what may be done with it" (p. 7). He also notes that "the most seductive and dangerous move in politics is that move which asserts identity to be *not* political but, somehow, natural or original" (p. 90). But it should also be noted that Kukathas is comfortable speaking of rights as well as individualism (pp. 90–92).

¹¹ John Tomasi, *Free Market Fairness* (Princeton, NJ: Princeton University Press, 2012).

¹² Ibid., pp. 90ff.

¹³ Jacob T. Levy, *Rationalism, Pluralism, & Freedom* (Oxford: Oxford University Press, 2015), p. 4.

Elsewhere, we have defended a natural rights approach, as well as an approach to ethics that would support the natural rights tradition.¹⁴ Here our larger project is to more solidly connect both these approaches to metaphysical realist¹⁵ foundations already sketched in our previous works. For the moment, however, we will take a brief look at what might be “wrong” with the natural rights approach according to the authors just mentioned. Our object is not to carry out a complete analysis of these authors, but rather to use them to help guide us in seeing what metaphysical realism needs to address in order to be of service to the natural rights tradition.

1 WHAT’S WRONG WITH NATURAL RIGHTS?

If there is indeed a movement away from defending liberalism or libertarianism by grounding that defense in natural rights, the reasons for this trend could attach to one or the other of two extremes. On the one hand, there is the possibility that the natural rights approach is mistaken, defective, or useless. On the other hand, there is the possibility that natural rights are all well and good, but that there are other arguments to be made and that these need our focus and attention. In this latter case, there would be no direct attack upon natural rights; and because natural rights are basically being ignored, we might have no real sense of an author’s attitude towards them. It thus seems plausible to suppose that an author who ignores any direct attack upon or mention of natural rights believes other arguments are better suited to the defense of liberalism and can succeed without the need to appeal to natural rights. This latter position seems to apply to David Schmidtz.

Schmidtz, like others such as Rawls, wants to avoid what has become known as foundationalism. This is often described in terms of a foundational standard from which or to which other principles or conclusions can

¹⁴See Douglas B. Rasmussen and Douglas J. Den Uyl, *Norms of Liberty: A Perfectionist Basis for Non-Perfectionist Politics* [hereinafter *NOL*] (University Park: Pennsylvania State University Press, 2005), especially chapters 4 and 11; and Douglas J. Den Uyl and Douglas B. Rasmussen, *The Perfectionist Turn: From Metanorms to Metaethics* (Edinburgh: Edinburgh University Press, 2016).

¹⁵This view holds that there are beings that exist and are what they are apart from our cognition, but that we can nonetheless know both the existence and nature of these beings. This position will be developed and defended in later chapters, particularly Chap. 7.

be derived or reduced.¹⁶ Instead of being foundationalist, Schmitz's theory is pluralistic in that it is composed of multiple elements, none of which is reducible to any of the others or to some other foundational conception. The theory is also described as being "contextual" in that the elements of the theory are called upon in different ways and by different contexts, though all are part of a theory of justice.¹⁷ However, there are things beyond justice that can and do come into play when considering the issue of justice itself. For this reason, Schmitz describes the theory as "functionalist."

When considerations internal to the concept [of justice] (for examples [sic], analyzing the word "due") do not settle which rival conception we should believe, we can ask what matters *outside* the arena, without prejudice to ideas that matter within.¹⁸

As he notes just below this statement, "different principles apply to different contexts." Consequently, whatever functions to make a principle applicable and plausible will depend on the context in which a principle might be applied. What we learn in this regard is that principles of justice conceived in the abstract, such as equality or desert, might hold up in one context but not in others. That is, in one context equality might be called for, whereas in another equality might be overridden by desert; and either context might be subject to empirical work that could inform and direct the applicability of the principles themselves.

Schmitz uses the analogy of maps to talk about theories.¹⁹ Theories are like maps in helping us get to where we want to go. They grow out of the "landscape" that we want to navigate—they do not define that landscape. Real moral questions are then basically calls for maps and are *always* subject to counterexamples, where a particular configuration of the map would not be useful or relevant. There is an objective truth involved, since the map has to refer to something real; but different maps might be needed for the same landscape depending on one's navigational purposes. Which map to use obviously requires judgment, and ultimately the success of a

¹⁶Schmitz in the *Elements of Justice* (p. 17) distinguishes his pluralistic theory from one that has an "overarching standard to which the others reduce."

¹⁷Ibid.

¹⁸Ibid., p. 18.

¹⁹Ibid., p. 21ff.

judgment seems to have something to do with how *compelling* the map is in guiding our navigation.²⁰

Now, as stated previously, our purpose here is neither to explore this theory further nor to provide much of a critique, but rather to use the theory to help us understand what a natural rights/natural law theory might contribute or would need to contribute to be successful. So, for example, it seems likely that a natural rights theory *is* a foundationalist theory when it comes to justice, so it may be in conflict with a theory like Schmidtz's. But that assumes the theories operate at the same level of abstraction, when in fact they may not. In addition, it may seem that a realist theory like our own is contrary to what appears to be a kind of intuitionist theory in Schmidtz—and that the applicable theory would be the one that is more compelling. However, perhaps what we are compelled by is what matches reality, such that the intuition is an expression of a realist epistemology after all.

It seems clear, however, that on the surface, the approach taken by Schmidtz calls for answers to questions like: How do we know the maps are good ones? What determines a good judgment from a bad one? How are contexts defined? Must compulsion always accompany truth? What sorts of “outside” considerations are allowable when thinking about justice, and why? A natural law/natural rights approach could be helpful in answering such questions in the sense that it may provide a basis for making some of the needed distinctions or providing a general framework for answering them. The point is that although logically there may be a way to fit the kind of approach Schmidtz wishes to take within a natural rights/natural law framework, that is not in fact done, and is not done presumably because of the belief that doing so is either not necessary or would obscure some benefit the contextualist approach offers. By the same token, it may be that other general and basic frameworks—for example, some forms of constructivism²¹—might also serve to answer the basic questions just raised about the metaphor of maps. Finally, looking for one general framework for answering such questions may be exactly the kind of approach that is to be avoided according to Schmidtz, since no theory can

²⁰ Ibid., p. 28.

²¹ Constructivism comes in both ethical and epistemic forms and is opposed to metaphysical realism in that it rejects that truth is ultimately based on our cognition of the existence and nature of cognitive-independent beings but is instead in some way a function of our cognitive processes themselves.

cover all the bases. Thus, theories like natural rights/natural law that try to provide an overarching framework are ipso facto on the wrong track. We shall speak to some of these issues below.²² For now, one of the main takeaways from Schmidtz is the question of just what the natural rights framework provides that cannot be obtained elsewhere without it, and whether and to what degree natural rights can be influenced by that which is “outside the arena.”

Some years after Schmidtz published his *Elements of Justice*, John Tomasi published his *Free Market Fairness*.²³ Ostensibly, Tomasi seems more willing to talk about basic rights (often linked to natural rights) than is Schmidtz. He advocates, for example, the “inalienability of certain basic rights and liberties” (p. xvi). However, in this connection he cites Murray Rothbard who claims that “the right of self-ownership and the right to homestead establish the complete set of principles of the libertarian system. The entire libertarian doctrine then becomes a spinning out and application of all the implications of this central doctrine” (p. 47). The main implication Rothbard is referring to is the basic and absolute nature of property rights. Property rights are just an extension of self-ownership and homesteading, and for libertarians this is the foundational language of rights which in turn provides the limitations on individual and state action. Property rights as absolutes are also the principal components of libertarianism rejected by Tomasi. Tomasi allows for property rights to be basic rights but notes that “property rights are component parts of a multifaceted liberty-protecting scheme” (p. xvi).

Instead of being rooted in property rights, Tomasi’s system, which he calls “market democracy,” has four dimensions: (1) capitalist economic freedoms (which would largely be property rights), (2) society as a spontaneous order, (3) just and legitimate political institutions acceptable to those who live under them, and (4) “social justice as the ultimate standard of political evaluation” (p. xv). Much like Schmidtz, Tomasi holds that each of these dimensions of market democracy prevents any of the others from being “absolute.” In that regard, the doctrine is pluralistic. And like the reality variously depicted by Schmidtz’s maps, market democracy should not be regarded “as a single interpretation of liberalism but as a general research program” (p. xx). Thus, while property rights are basic and inalienable in their own context, they are just part of a larger “liberty

²² We offer a critique of constructivism in Chaps. 6 and 7.

²³ For our discussion of this work, most page references will be placed in the text.

protecting scheme” (p. xvi). On the face of it, Tomasi’s system seems not to be like a natural rights system where certain basic rights are the foundational basis for evaluating and generating any others. Tomasi asserts that libertarians have put property rights in such a foundational position, and his market democracy rejects this way of approaching liberty.

So, the non-absoluteness of property rights means that they can be challenged or modified by other considerations and by any other rights coming from the other central dimensions. The same applies to any “rights” that would be generated by the dimensions not concerned with economic liberty.²⁴

Market democracy rejects the idea that property rights outweigh the other basic liberties or are in any sense moral absolutes. It affirms a thick conception of economic liberty as part of a broader scheme of rights and liberties designed to enable citizens to exercise and develop their moral powers.²⁵

What this means in practice is that while basic rights are basic within their particular dimension, they are not so across the four dimensions, as might be the case for natural rights. For our purposes then, what is critical here, and contrary to our own approach of defending the idea of *natural* rights, is that for Tomasi, “all basic rights and liberties are socially constructed in important ways” (p. 71).

As we briefly noted above, a consequence of the socially constructed interplay of basic rights and liberties is that a form of social justice becomes the object and measure of success in Tomasi’s political order. Indeed, the classical liberal and libertarian remnants within market democracy are themselves measured against the social justice standard.

[F]rom a market democratic perspective, these classical liberal and libertarian thinkers come very close to an attractive idea that lies near the very heart of social justice. This is the idea that institutional regimes should be evaluated in terms of the benefits they provide to all citizens subject to them. In particular, institutional regimes should be evaluated in terms of how those systems are expected to affect the interests of the working poor.²⁶

²⁴The language of rights is seldom used in the other categories besides the economic one.

²⁵Tomasi, p. 69.

²⁶Ibid., p. 141.

It seems clear from the foregoing that the political order recommended by Tomasi would be one kind of what we would call a perfectionist political order, since there are ends to which that order is put—namely the “benefits” to be provided, especially to those on the lowest economic rung, by the institutions under which the citizens live. We have argued against the perfectionist approach to politics elsewhere. Given that our purpose here is neither to give a full exposition of Tomasi’s conception of a market democracy nor to present a sustained criticism of this view, the challenge we are left with is to clarify once again why natural rights have import in considerations of well-being. This in turn will require us to once again explain the relationship between a perfectionist ethics and a non-perfectionist politics. But if we can show that the “socially constructed” rights are themselves subject to an additional evaluational standard that is not itself a social construct, then perhaps we will have made some space for natural rights. Doing this would in turn allow us to reject social justice as the ultimate standard of evaluation as we find it in Tomasi and to return to the negative natural rights approach Tomasi rejects. To do all this, however, requires us to take seriously Tomasi’s suggestion that there is more to a social/political order than basic negative natural rights.

More recently, the move away from natural rights has been spearheaded by Jacob Levy. As we noted earlier, the theories of liberalism with which Levy is working are not primarily about rights. Rather, his rationalist and pluralist types of liberalism are meant to represent a tension within liberalism itself.²⁷ Levy defends pluralistic liberalism against the rationalist sort, but his main point is that neither form can do away with the other and the tension between them remains ever present. He defines the two forms as follows:

One strand of liberalism [pluralist] emphasizes freedom for persons as they are, living the lives they already lead, lives that are embedded in particular communities and partly shaped by particular cultural and religious traditions. The other [rationalist] looks to the importance of free person’s ability to transform or transcend those current lives. On the one side of this divide lies a liberalism I will call “pluralist”: skeptical of the central state and friendly toward local, customary, voluntary or intermediate bodies, communities, and associations. On the other we see a liberalism I will call “rationalism”: committed to intellectual progress, universalism, and equality before a

²⁷ Jacob T. Levy, *Rationalism, Pluralism, & Freedom*, p. 3. For our discussion of this work, some page references will be placed in the text.

unified law, opposed to arbitrary and irrational distinction and inequalities, and determined to disrupt local tyrannies in religious and ethnic groups, closed associations, families, plantations, the feudal countryside, and so on.²⁸

On this way of modeling liberalism, rights would be derived *from* the framework adopted, whether pluralist or rationalist. Unlike natural rights, rights under Levy's liberalism do not define the framework for thinking about liberalism. Instead, Levy's liberalism defines rights. Rights might be universalistic in the rationalist framework and particularistic in the pluralist one. In neither case is liberalism given its structure through rights, as in the traditional kind of appeal to first principles. As Levy notes, "disagreements among liberals are often disagreements about the shape of the social world rather than about first principles, and that the ultimate irresolvability of the pluralist-rationalist tension owes as much to social as to philosophical difficulties."²⁹ The main project, then, is to describe and adjudicate these "social difficulties," which apparently can be done without recourse to any appeal to natural rights.

Although Levy favors pluralism, pluralism and rationalism are not meant to be exclusionary binaries. In any situation, both are likely to be at play. Hence, the main thrust of Levy's book is to indicate that rationalism does not hold a monopoly on the foundations and meaning of liberalism.³⁰ Indeed, Levy's bias towards pluralism is a kind of defense of spontaneous orders growing and evolving differing communities.³¹ Liberalism is better understood through this lens than through one which can only provide a view in terms of universals and abstract principles. But for our purposes, the interesting question is whether any of this is necessarily incompatible with a theory of natural rights. Given that it is labeled as a social theory, it may "fly under the radar" of an overarching natural rights theory. Levy seems to allow for some compatibility between his two liberalisms and some form of "pure theory" that, as he notes, "is built on rights-claims" (pp. 46–47). Moreover, "pure theory stands apart from impure predictions and possibilities"; though in the end, it "has the

²⁸ Ibid., p. 2.

²⁹ Ibid., p. 9.

³⁰ It is important to realize that, by "rationalism," Levy is not referring to a theory of knowledge or a standard of argumentation, but to "a kind of demand that rational accounts be given to justify customs, norms, and beliefs, demands that can never be wholly satisfied." Ibid., p. 27.

³¹ Ibid., p. 39.

potential to be self-undermining” (p. 47). So, despite its dangers, “pure theory” does have a place for Levy, though not much of one for understanding what is really going on with liberalism. Hence, our question becomes: Just what is the role for a “pure theory” of natural rights, given that so much seems able to be done without reference to it? Perhaps, as Levy seems to recognize, the issue might have something to do with managing abstractions.³² In some of what we say directly below, as well as much later, resolving confusions about abstraction could play an important role in thinking properly about natural rights. Those confusions are, for us, a not unexpected consequence of the abandonment of metaphysical realism.

Michael Huemer is definite in his rejection of natural rights. His rejection is based on his metaethical views.³³ Huemer is a moral realist and believes that there is ethical knowledge. He thinks that moral propositions refer to objective moral properties, but these properties are neither reducible to any properties of things, nor in any way based on or the result of these properties—even the properties of living things. In other words, Huemer is a non-naturalistic moral realist; and this involves a rejection not only of current naturalistic thought in ethics but even of Aristotelian versions of naturalistic ethics. Thus, it almost goes without saying that he denies *natural* rights.

For Huemer, moral properties—for example, goodness—occupy a separate ontological domain. He holds that we can have direct or intuitive knowledge of this domain and, accordingly, discern what is morally good or bad, right or wrong. It is because of this sort of knowledge that he claims that it is wrong for people to be coerced—that is, for the use or threat of physical force to be initiated against them. People have a right not to be coerced, but a right not to be coerced simply translates into the claim that it is wrong for people to be coerced. Nothing more.

Huemer further claims that it is not necessary to have a developed theory as to what supports or grounds this right. An intuition of what is right or wrong in a particular case is sufficient; and when it is universalized, it can support or defeat a political theory. Indeed, for Huemer, the questions

³² Levy finds abstraction “useful” (p. 5) but laments that liberalism has become identified with it.

³³ See Michael Huemer’s works: *Ethical Intuitionism* (New York: Palgrave Macmillan, 2005); and *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey* (New York: Palgrave Macmillan, 2013).

of political philosophy are in principle no different than the questions of ethics. Moreover, political authority has no special standing over and above the ethical authority one can discern from an intuition. For example, if it is wrong for William to coercively take money from Mary to fulfill the medical needs of others, then it is also wrong for the political/legal order to do so as well. Of course, the intuition that it is wrong to coerce people must compete against other intuitions—for example, that it is good for people to have their basic medical needs met—but Huemer believes this is the price we pay for not being unrealistically absolutist about rights. Further, he is confident that if all the natural facts about coercive proposals are made clear, the intuition of what moral facts dictate will in most cases be clear. That it is wrong to coerce people will generally be upheld.³⁴

While we will not consider Huemer's approach to rights in detail in what will later come, his approach is a useful foil, because it provides us with an opportunity to reprise some of the more important points of our previous works—namely, what kind of moral concept a right is, the role of human nature in grounding rights, and a non-reductive naturalistic account of human good. Even more, it provides us with the opportunity to reveal the importance of making a realist turn in which the nature of things and our knowledge of them is of fundamental importance.

2 PROBLEMS WITH THE NON-AGGRESSION PRINCIPLE?

Up to this point, we have been speaking of natural rights in the abstract and discussing the sorts of frameworks to which they may not be attached. As one might expect, if natural rights are being ignored, circumvented, or dismissed, then the expression of them usually found in the literature would have to be challenged as well. In libertarian political philosophy, the natural rights position is often thought to be expressed through what is known as the “non-aggression principle” (NAP). The principle goes something like, “no man or group of men may aggress against the person or property of anyone else.”³⁵ As Matt Zwolinski notes, this principle has

³⁴ See David Gordon's critique of Huemer's argument for libertarianism, “From Intuitions to Anarchism,” *Journal des Economistes et des Etudes Humaines* (forthcoming).

³⁵ This formulation of the NAP is cited as coming from Murray Rothbard by Matt Zwolinski in “The Libertarian Non-Aggression Principle,” *Social Philosophy and Policy* 32, no. 2 (2016): 63. All references to Zwolinski in the text of this section will be to this piece unless otherwise noted. Ayn Rand's formulation is slightly different: “no man or group may initiate the use of physical force against others.” “What is Capitalism,” *Capitalism the*

been used to speak to a wide variety of moral and social issues and has generally resulted in claims against taxation, redistribution, public confiscation of property, and the like.³⁶ Zwolinski wishes to show the weakness of the NAP as a guiding principle. Our purpose below in commenting on Zwolinski is not so much to offer a rebuttal as to further help us locate the status and role of a concept like natural rights.³⁷ Zwolinski raises a number of important arguments and questions that should not be ignored; but as we shall see below, the arguments miss recognizing why there is this principle in the first place. This failure has a lot to do with the nature and role of principles which will occupy us in Chap. 3.

The NAP is usually cashed out in terms of individual rights—that the prohibition against aggression gives each of us the right against such aggression. But of course, almost as soon as one says something like this, a plethora of problems and issues arise. What we mean by “aggression” and what we mean by “rights” are two of the main issues. Zwolinski notes that libertarians tie aggression to property rights, which raises questions about the nature of that link. Moreover, some say that property rights evolve from notions of self-ownership, which is itself a complicated concept. The argument Zwolinski examines goes something like this: We each have the right against aggression by others (non-aggression). Aggression occurs not only, or especially, when one is physically assaulted but also, and perhaps more frequently, when one violates the property rights of others. Property rights are simply an extension of self-ownership, so that when one violates a property right, it is an act of aggression against the person herself who has this right. Therefore, the violation of a property right is little different from an assault upon a person and must not be permitted.

While everyone is against rape, murder, theft, and fraud, the idea that every property rights “violation” is equivalent to these illicit acts seems a stretch, to say the least. The link is made possible through the concept of self-ownership, which is used to argue against both the illicit acts of rape,

Unknown Ideal (New York: Signet Books, 1967), p. 19. We prefer the Randian formulation; and it does make a difference with respect to Zwolinski’s arguments, since it is more precise. However, the connection to “physical force”—which is the main difference between the two formulations—is not absent from Zwolinski’s account, just not well recognized as making a difference.

³⁶ Zwolinski, pp. 62–90.

³⁷ An excellent response is provided by Billy Christmas: “Rescuing the Libertarian Non-Aggression Principle,” *Moral Philosophy and Politics* 5, no. 2 (2017): 305–25.

murder and the like, and thus by extension any violation of a property right, since all property is thought to be an extension of, and thus owned by, the self. With all property being just a form of self-ownership, self-ownership becomes the basis on which a libertarian political philosophy is produced. Zwolinski, while sympathetic to some libertarian conclusions, wants to challenge a number of parts of this line of argument.

Zwolinski's opening complaint (p. 67) is that "aggression" and "property rights" are "moralized" concepts and thus already presuppose the frameworks they are trying to defend. Self-ownership offers little help since it too presupposes some moral conclusions. We have no real problem with Zwolinski's complaint here. We ourselves have elsewhere made a similar argument about the limitations of the concept of self-ownership.³⁸ By the same token (as we also note), NAP or self-ownership might be summary concepts that are indeed moralized, but which nevertheless have some theoretical backing elsewhere.³⁹ They are thus used to capture a body of principles in a convenient "catch phrase," rather than to be presented as a theoretical claim. For our purposes here, it is true that the NAP and self-ownership are often connected to a natural rights type of libertarian liberalism. They are thus also used to help define the limitations of encroachments upon persons' rights, as that might affect public policy. In this regard, they have been used to criticize proposed public policy initiatives. The point here, however, is that if the NAP is buttressed by a competent theory of rights, then its being a moralized expression is not a problem. Indeed, such a moralized shorthand might even help us in considering the appropriate limits of action. The problem we face is not the shorthand, but the plausibility of the rights claims that back it up. That leads us to Zwolinski's second main objection.

The second main argument used by Zwolinski is that not all violations of property rights involve the initiation of force and/or violence (p. 70). Here he lists fraud and trespass. Both of these actions might be wrong, but they are not instances of violence. Zwolinski goes so far as to suggest that if a ban on these violations is enforced by legal sanctions, then it is the

³⁸ *NOL*, chapter 9.

³⁹ Rand has an ethical theory; Rothbard has a book on ethics, *The Ethics of Liberty* (Atlantic Highlands, NJ: Humanities Press, 1982); and Christmas (see footnote 37 above) backs up the NAP with a theory about non-interference. We make no comment here about the adequacy of any of these theories, but we also want to avoid confusing the rhetoric of political debate with theoretical approaches. NAP is certainly a rhetorical tool. Nonetheless, it may still represent a real principle, as we discuss later.