

ARISTOTLE'S CONCEPTION OF FREEDOM

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I

ARISTOTLE FOR LIBERALS. In the present struggle between liberals and communitarians,¹ it is most often the communitarians who are seen bearing the standard of Aristotle. Yet liberalism's Aristotelian roots are deep; a continuous line of influence can be traced from Aristotle through the Scholastics to Locke and Jefferson (the natural law strand), and alongside it a parallel line from Aristotle through Polybius to Montesquieu and Madison (the constitutionalist strand).² Fred Miller's recent book *Nature, Justice, and Rights in Aristotle's Politics*³ is the latest in a growing number of attempts to reclaim the Aristotelian heritage, at least in part, for liberalism. As a fellow laborer in the same field,⁴ I very much admire what Miller has accomplished in his book.

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¹Very briefly, liberals are those who envision the political order as a framework within which individuals are free to pursue their own separate conceptions of the good; among recent statements of the liberal ideal are John Rawls' *A Theory of Justice* (Cambridge: Harvard University Press, 1971) and Robert Nozick's *Anarchy, State, and Utopia* (New York: Basic Books, 1974). Communitarians are those who envision the political order as a community shaped by a shared conception of the good and characterized by bonds of solidarity and mandatory civic participation; among recent statements of the communitarian ideal are Michael Sandel's *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982) and Alasdair MacIntyre's *After Virtue: A Study in Moral Theory*, 2nd ed. (Notre Dame: University of Notre Dame Press, 1984). Sandel and MacIntyre appeal frequently to Aristotle, while Rawls and Nozick are more likely to invoke Kant, Mill, or Locke.

²To quibblers who query how parallel lines can originate from the same point, it may be retorted that the geometry of metaphor is non-Euclidean.

³Fred D. Miller, Jr., *Nature, Justice, and Rights in Aristotle's Politics* (hereafter, *NJR*) (Oxford: Oxford University Press, 1995).

⁴To beat our opening martial metaphor into a ploughshare.

In particular, Miller argues persuasively for attributing to Aristotle the following theses—theses traditionally rejected by communitarians as liberal innovations antithetical to the Aristotelian point of view:⁵

- a) individuals have rights;
- b) these rights are natural, not merely legal or conventional;
- c) these rights forbid any sacrifice of the individual's interests to the interests of the community;
- d) the state has an obligation to respect and protect these rights;
- e) in order to secure these rights, the state's constitutional structure should be arranged so as to provide checks on governmental power;
- f) legitimate political authority rests on the consent of the governed; and
- g) a government that fails to respect the rights of its citizens may legitimately be overthrown.

I believe Miller's case for attributing these seven theses to Aristotle is sound, and I shall accept it as my starting point.

However, in my opinion Miller does not go far enough; Aristotle's affinity with modern liberal theory can be made even stronger. In particular, it can be shown that on four points Miller makes unnecessary concessions to the communitarian interpretation of Aristotle:

Concession One: Aristotle, unlike the modern liberal, countenances no right to do wrong.

Concession Two: Aristotle, unlike most liberal natural-rights theorists, recognizes no rights existing in a prepolitical "state of nature."

Concession Three: Aristotle, unlike the modern liberal, regards liberty as having only an instrumental and peripheral value.

⁵The precise wording of this list, and the division into seven items, are mine, not Miller's.

Concession Four: Aristotle, unlike the modern liberal, assigns no central place to autonomy in his conception of rights.

All four of these concessions can be shown to be mistaken—in part on grounds that Miller himself provides.

No attempt will be made to argue that Aristotle is a liberal. Clearly, he is not. In particular, his attachment to what Miller calls the Principle of Community and the Principle of Rulership must effectively bar him from the liberal ranks.⁶ Moreover, Aristotle is willing to place serious restrictions on rights that liberals have traditionally held dear, including freedom of speech,⁷ freedom of religion,⁸ freedom of exchange,⁹ and reproductive freedom.¹⁰

Aristotle, however, is a complex thinker, and his normative social theory contains both liberal and communitarian tendencies, often closely intertwined. The claim to be defended here is simply that the liberal, individualist strand in Aristotle is still more robust than even Miller is prepared to maintain.

II

Does Aristotle Recognize a Right to Do Wrong? Miller's First Concession is that Aristotle, unlike the modern liberal, countenances no right to do wrong. Is this concession correct?

In the course of arguing for the thesis that Aristotle has a theory of rights—thesis (a)—Miller considers an objection by Terence Irwin.¹¹ Irwin suggests that if rights are to have any genuine ethical punch—if they are to be “the kind of rights which are morally distinctive in that their possession and exercise cannot be replaced by other people's benevolence or sense of duty to the right-holder”¹²—they must have the following structure:

⁶The Principle of Community: “individuals can attain the good only if they belong to and are subject to the authority of the political community.” The Principle of Rulership: “the community can function only if an order is imposed on it by rational agents”; Miller, *NJR*, 336.

⁷See Aristotle, *Politics* 1336b3–23.

⁸See *Politics* 1330a8–9.

⁹See *Politics* 1270a18.

¹⁰See *Politics* 1335a4–b26.

¹¹See Miller, *NJR*, 115–17.

¹²Terence H. Irwin, *Plato's Moral Theory* (Oxford: Oxford University Press, 1977), 344 n. 29.

If *X* has a right to *A*, then *A* is due to *X*, or *X* is morally entitled to *A*, whether or not we regard *A*'s having *X* as morally best over all; and . . . in particular, some of *X*'s rights give him freedom to claim or not to claim *A*, as he prefers, and to have his claim granted or his failure to claim respected, whether or not the overall moral results are best.¹³

But, argues Irwin, a teleological ethic like Aristotle's, which makes the achievement of a goal (well-being or eudaimonia) the supreme moral standard, cannot countenance rights protecting choices that frustrate that goal. Hence there is no place for "morally distinctive rights" in Aristotle's moral framework.

Surprisingly, Miller concedes that Aristotle recognizes no "morally distinctive rights" in Irwin's sense of that phrase:

Such "morally distinctive" rights can prohibit paternalistic interference by *X* with particular choices of *Y* based on *X*'s conviction that the choices are not in *Y*'s best interests. The fact that Aristotle assigns to the laws the role of inculcating virtue even in adults . . . may be taken as evidence that Aristotle does not recognize "morally distinctive" rights.¹⁴

Thus Miller's only objection to Irwin's line of argument is that it is tendentious to reserve the designation "morally distinctive" to the sorts of rights that liberals care about: "it assumes without argument that a theory of 'morally distinctive rights' must have a peculiar character, viz., to protect autonomy or liberty."¹⁵ However, if we take "morally distinctive rights" as a stipulative term of art, meaning, in effect, rights to do wrong, then Miller appears ready to concede that such rights are foreign to Aristotle's thought.

What is odd about this concession is that Miller has just noted, on the previous page,¹⁶ that Aristotle recognizes "optional rights"—that is, cases in which an agent who has the right to do *A* also has the right not to do *A*. For example, a creditor has the right to forgive his debtor, or not; a father has a right to disinherit his son, or not; a property owner (ordinarily) has the right to alienate his property, or not.¹⁷ To get from Miller's "optional rights" to Irwin's "morally distinctive rights," all we need to add is the additional premise that it is not al-

¹³Ibid., 273.

¹⁴Miller, *NJR*, 116.

¹⁵Ibid., 116.

¹⁶Ibid., 115.

¹⁷See Aristotle, *Nicomachean Ethics* (hereafter, *NE*) 1163b18–25; *Rhetoric* 1361a19–23; cf. Miller, *NJR*, 106, 115, 312–13. For an exception to the right of alienation, see *Politics* 1270a18.

ways a matter of indifference which way one chooses to exercise one's optional rights. That premise is surely not difficult to supply; how, for example, could it be a matter of moral indifference whether to disown one's son or not? Aristotle himself notes, at the passage in question, that this is a drastic measure, to be undertaken only when the son has entirely succumbed to vice.¹⁸ At least in some cases, then, Aristotle's "optional rights" will be "morally distinctive rights," that is, rights to make not only the right (eudaimonic) but also the wrong (counter-eudaimonic) choice.

Indeed, the existence of at least some rights to do wrong is implicit in Aristotle's defense of private property rights as a precondition of the virtue of generosity.¹⁹ The difference between generous giving and just giving is that generous giving involves giving what one has a right to withhold (for example, one's property), while just giving involves giving what one does not have a right to withhold (for example, the property of another, when surrendered to that other). Aristotle's point is that without private property rights, no act of giving could count as generous; generosity would simply collapse into justice. Thus, in Aristotle's eyes, generosity presupposes the right to act ungenerously.

Yet Aristotle does not regard generosity as supererogatory; indeed, there is no room for the concept of supererogation in a morality based on apprehension of the mean, where going beyond what virtue requires is as much a vice as falling short. (In general, the notion of supererogation has its place only in moralities that see a conflict between morality and self-interest, and so regard the highest ethical achievements as imposing too great a sacrifice to be morally mandatory. Such conflicts have no place in a eudaimonistic ethic.) Thus generosity is not morally optional; yet one has the right to withhold the generous act. Once again, then, we see that Aristotle is committed to recognizing rights to do wrong.

The generosity example also explains how a teleological theory like Aristotle's can accommodate rights to bring about counter-teleological outcomes: sometimes the freedom to bring about a certain outcome can be necessary (whether instrumentally or constitutively) to

¹⁸See *NE* 1163b18–25.

¹⁹See *Politics* 1263b10–15.

the greatest good, even if that outcome itself is not necessary or even desirable.²⁰

III

Does Aristotle Recognize Prepolitical Rights? Miller's Second Concession is that Aristotle, unlike most liberal, natural rights theorists, recognizes no rights existing in a prepolitical "state of nature." Is this concession correct?

In attributing a theory of natural rights to Aristotle—thesis (b)—Miller distinguishes two senses of natural rights, and emphasizes that it is only in the first sense that Aristotle can be said to accept natural rights:

A natural₁ right is *based on natural justice*; a natural₂ right is possessed *in a state of nature*, i.e. in a pre-political state. The senses are not equivalent, because the political rights which a citizen possesses in a just polis may be natural₁ without being natural₂. Moreover, modern theories of natural₂ rights typically treat rights as universal and inhering in human beings as such apart from any social or political relations. Natural₁ rights have no such implications.²¹

Does Aristotle hold that individuals possess natural rights in some sense? . . . Recall the two senses of "natural rights" distinguished earlier: natural₁ rights based on natural justice, and natural₂ rights possessed in a pre-political state of nature. . . . Aristotle . . . endorses natural rights in the first (which I am calling "rights based on nature") but not the second sense. . . . That Aristotle would not derive political rights from pre-existing pre-political natural rights seems clear. Unlike Locke, who regards the natural law which governs the state of nature as prior to political justice. . . . Aristotle's natural justice presupposes a political context. Because natural justice is inherently political, it obviously cannot support pre-political natural rights possessed by individuals in a pre-political state of nature.²²

This concession, too, is mistaken. Miller's case for attributing natural₁ rights to Aristotle is compelling, but we should also go farther and attribute natural₂ rights to him as well.

The key to Aristotle's theory of justice lies in his contention that a human being is an essentially rational and political animal. The terms

²⁰For a political application of this insight, see John Tomasi, "Individual Rights and Community Virtues," *Ethics* 101 (April 1991): 521-36.

²¹Miller, *NJR*, 88.

²²*Ibid.*, 122-3.

we translate as "rational" and "political" are λογικόν and πολιτικόν, respectively; but these translations, while valid for most purposes, do not fully capture the close links Aristotle sees between our nature as rational beings and our nature as political beings. λόγος does mean "reason," but its more basic meaning is "speech," or "language," or indeed anything that is *spoken*.²³ By extension, it has two derivative meanings: first, that which is expressed or explained in speech—in other words, the intelligible nature of something;²⁴ and second the capacity or faculty of speech—in other words, reason. However, even when λόγος is used to mean "reason," it nevertheless retains a connotation of "language" and "discourse," and accordingly a social dimension, that the English word lacks.²⁵ To be a rational animal is to be a language-using animal, a conversing animal, a discursive animal; and to live a human life is to live a life centered around discourse.

Our nature as rational animals is thus closely allied to our nature as political animals. To be a political animal is not simply to be an animal that lives in groups or sets up governments (after all, sheep do the former, and barbarians do both; but neither, in Aristotle's view, are political—or at least not in the fullest and highest sense); rather, it is to cooperate with others on the basis of discourse about shared ends.

Now that man is more of a political animal than the bee and every other gregarious animal is clear. For nature, as we say, makes nothing in vain, and among the animals only man has λόγον. So while mere voice is an indication of pain or pleasure, and hence is found in other animals (for their nature reaches as far as this: having the perception of pain and pleasure, and indicating these to one another), λόγος is for revealing the advantageous and the disadvantageous, and so also the right and the wrong. For this is peculiar to man, as opposed to the other animals: to be the sole possessor of the perception of good and evil, of right and wrong, and the others. And a community of these makes a household and a polis.²⁶

²³Thus each of the following can, according to context, serve to translate λόγος: "word," "phrase," "sentence," "conversation," "story," "explanation," "account," "definition," "argument."

²⁴Or, more narrowly, a ratio or proportion.

²⁵The Latin word *ratio* (with its close connection to *oratio*) comes much closer to capturing the range of meanings associated with the Greek λόγος.

²⁶*Politics* 1253a7–18 (author's translation); all translations of the *Politics* are the author's and are based on W. D. Ross, ed., *Aristotelis Politica* (Oxford: Clarendon Press, 1957).

For Aristotle, being political is an expression of being rational; just as rational animals naturally conduct their private affairs through reason rather than through unreflective passion, so they naturally conduct their common affairs through public discourse and rational persuasion, rather than through violence—unlike the non-Greek barbarians, whose (alleged) inability to conduct either their private or their common affairs through λόγος makes them natural slaves. A fully human life, then, will be a life characterized by reason and intelligent cooperation. (Bees may cooperate after a fashion, but not on the basis of discourse about shared ends.) To a discursive (λογικόν) animal, reason's value is not solely as an instrumental means to other goals, but as an intrinsic and constitutive part of a fully human life; and the same is true for the value of cooperation. The λογικόν animal, to the extent that it truly expresses λόγος, will not deal on cooperative terms with others merely because doing so makes others more likely to contribute instrumentally to the agent's good; rather, the agent will see a life of cooperation with others as an essential part of his own good.

For the complete good seems to be self-sufficient. But by the self-sufficient we mean not what is so for one alone by himself, living a solitary life, but what is so also for parents and offspring and wife, and in general for friends and the members of one's polis—since man is a naturally political animal.²⁷

And from this it is apparent that a polis, insofar as it is truly so named and not merely for the sake of words, must diligently concern itself with excellence; for [otherwise] the community becomes a mere alliance of aliens, differing only in location from the alliances of those who live far apart; and law is a mere agreement, just as Lycophron the sophist says, "a surety to one another of right," but not such as to make the polis-members good and righteous. . . . It is apparent, then, that a polis is not the sharing of location, for the sake of not wronging one another and also of trade. Rather, these things must necessarily be present if a polis is to exist; yet a polis is still not the presence of all of these, but is the community of both households and families for the sake of a complete and self-sufficing life.²⁸

To the extent that we are λογικόν animals, participation in a human community, together with a shared pursuit of the human good, is a constitutive part of a truly human life. Both the cooperative and the

²⁷NE 1097b7–11 (author's translation); cf. 1169b17–19; all translations of the *Nicomachean Ethics* are the author's and are based on I. Bywater, ed., *Aristotelis Ethica Nicomachea* (Oxford: Clarendon Press, 1894).

²⁸*Politics* 1280b6–35.

unjust person may indeed use reason instrumentally to advance their ends, but only for the former is reason also constitutive of his relations with others. To ignore the claims of others, then, is to lessen one's own humanity.

Aristotle is sometimes misread, however, as limiting the scope of an agent's legitimate moral concern to his fellow citizens. Aristotle does envision moral concern as quite properly thinning and diminishing in concentric circles from the agent's nearest and dearest outward.

For among friendships too, some are greater and others lesser. And rights (*δίκαια*) differ also; for those of parents against offspring and of brothers against one another are not the same, nor those of companions and those of polis-members, and likewise too in the case of other friendships. The wrongs (*ἀδίκια*) toward each of these, then, vary as well, and become greater insofar as they are toward those who are more fully friends; for example, it is more terrible to defraud a companion than a member of one's polis, and to not help a brother than a stranger, and to wound a father than anyone else. And the right (*δίκαιον*) naturally increases together with the friendship, inasmuch as they exist among the same people and have an equal extent.²⁹

But by the self-sufficient we mean not what is so for one alone by himself, living a solitary life, but what is so also for parents and offspring and wife, and in general for friends and the members of one's polis—since man is a naturally political animal. But some boundary must be put to these; for if they extend to ancestors and descendants and friends of friends, they will proceed to infinity.³⁰

Hence Aristotle concludes that the fortunes of our descendants affect our well-being—but only slightly!³¹

While the level of appropriate moral concern decreases with distance, it is never entirely extinguished. There is a certain degree of good will and friendship that one is supposed to show even to strangers.³² Admittedly, this sort of "friendship" falls short of friendship in the complete sense. Yet unlike friendships for pleasure or advantage, it does not appear to be a merely instrumental concern for others.³³ In this case it is the level of concern, not the type of motivation, that is diminished.

Our nature as discursive animals requires that we act cooperatively toward all other discursive animals. To be sure, the appropriate

²⁹NE 1159b34–1160a8.

³⁰NE 1097b8–13.

³¹See NE 1100a21–31, 1101a23–b9.

³²See NE 1108a9–28, 1126b19–1127a2, 1155a16–31.

³³See NE 1156a6–21.

expression of this general demand in particular instances, and thus the extent of others' moral claims on us, may be determined by such contingent factors as the closeness of our relationship to the persons involved. Still, those who wish to live a λογικόν life are committed to dealing with other λογικόν people as conversation partners rather than as slaves, cattle, or dupes.

Hence aggression against those outside one's polis is no less forbidden, on grounds of justice, than aggression against one's fellow citizens.³⁴ Those who are not our fellow citizens may nevertheless have rights against us.³⁵ Indeed, there is justice, Aristotle says, wherever there is common association (κοινωνία), and humans have a natural tendency toward common association with or without the polis; thus, Aristotle concludes, there would be a certain degree or kind of justice even if there were no polis.³⁶ The polis is the highest and most complete expression of the πολιτικόν ideal, and so justice can reach its fullest implementation only in the context of the polis; but less advanced forms of social organization are genuine, though inferior, ways of being πολιτικόν, and justice has its scope there too. (For Aristotle the human race may not be a κοσμόπολις, but it is at least a κοσμοκοινωνία.)³⁷

Now Miller is well aware of these passages, and even calls attention to them.³⁸ Yet although he recognizes claims of justice outside the polis, and generally is willing to call Aristotelian claims of justice "rights," he nevertheless resists conceding the existence of prepolitical rights in Aristotle's moral universe: "Because natural justice is inherently political, it obviously cannot support pre-political natural rights possessed by individuals in a pre-political state of nature."³⁹

Miller explains his reluctance to recognize Aristotelian prepolitical rights in the following terms:

³⁴See *Politics* 1324b22–36; cf. 1333b26–40.

³⁵See *NE* 1159b34–1160a8; *Politics* 1275a7–10.

³⁶See *Eudemian Ethics* 1242a19–28; cf. *NE* 1161b4–8.

³⁷Cf. Locke: "And being furnished with like Faculties, sharing all in one Community of Nature, there cannot be supposed any such *Subordination* among us, that may Authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of Creatures are for ours"; *Second Treatise of Government* 2.6. "For in the State of Nature . . . a Man [is subject to] the *Law of Nature*: by which Law common to them all, he and all the rest of *Mankind are one Community*, make up one Society distinct from all other Creatures . . . this great and natural Community"; (emphasis added) *Second Treatise*, 9.128.

³⁸See Miller, *NJR*, 84–6

³⁹*Ibid.*, 122–3.

Aristotle does not think that political justice derives from, or depends on, a pre-political form of justice. Justice applies wherever human beings have something in common, i.e. where it is possible for them to cooperate and form a community, and the justice which it embodies is the most perfect form of justice. Other forms of justice are so called by the similarity (*kath'homoiotêta*), because they resemble the primary case of political justice . . . but none of them is prior to political justice.⁴⁰

Although Aristotle recognizes non-political forms of justice, he does not treat them as prior to political justice. Rather they are called just due to their similarity to political justice, which is the most perfect form of justice.⁴¹

What Miller says in these passages is perfectly true; but as an argument against prepolitical rights, it conceals an important equivocation.

Prepolitical rights might be rights that are prior to political rights; call these prepolitical₁ rights. Or, more naturally, prepolitical rights might be rights enjoyed by inhabitants of a prepolitical state; call these prepolitical₂ rights. These rights may coincide in some theories (that of Locke, for example), but there is no reason to suppose that prepolitical₂ rights must necessarily be prepolitical₁ rights as well. The "pre" in "prepolitical₁ rights" refers to the logical priority of these rights in relation to political rights; the "pre" in "prepolitical₂ rights" refers to the temporal priority of the situation in which prepolitical rights are exercised in relation to that in which political rights are exercised.⁴² Miller is quite right to deny that Aristotle recognizes prepolitical₁ rights; but it is a mistake to take this fact to count against prepolitical₂ rights in Aristotle. The evidence Miller marshals is effective against prepolitical₁ rights, but Miller evidently takes himself to have disposed of prepolitical₂ rights also, since the rights he rejects are those "possessed *in a state of nature*, i.e. in a prepolitical state."⁴³ Yet we have already seen that Miller recognizes claims of justice in the prepolitical state; in view of the rest of Miller's interpretive conclusions,

⁴⁰Ibid., 86.

⁴¹Ibid., 122 n. 97.

⁴²Logical priority is presumably either "priority in formula" or "priority in completeness"; temporal priority is "priority in generation." For these Aristotelian distinctions, see Miller, *NJR*, 46-7.

⁴³Ibid., 88. To be sure, Aristotle would not be willing to call the prepolitical state a "state of nature," since for him the natural state is the highest and most developed one, that is, the political state. Indeed, Aristotle generally regards the mature state of an organism as its most natural state. However, Miller's gloss on "state of nature" shows that he is using the term simply in the Hobbesian sense of an absence of government.

there do not seem to be any grounds for denying prepolitical₂ rights to Aristotle, once these are disambiguated from prepolitical₁ rights.

An additional objection on Miller's part to finding prepolitical natural rights in Aristotle is that these are ordinarily conceived as "universal and inhering in human beings as such apart from any social or political relations."⁴⁴ But this too is ambiguous. After all, on any theory of rights, whether Aristotle's or a modern liberal's, rights will come into play only in a context of two or more persons; rights are necessarily rights *against* somebody.⁴⁵ In that sense, then, *no* rights theorist has ever believed in rights "inhering in human beings as such apart from any social or political relations." On the other hand, if Miller means that Aristotle thinks rights arise only in some *organized* social context, not in one-on-one encounters—so that a justice-grounding *κοινωνία* has to be something fairly fancy—this seems unconvincing. If Sciron is wandering through the wilderness, and he comes across another wanderer, and he robs and murders him just because he feels like it, has he done nothing unjust? This seems hard to believe. Aristotle insists that theft and murder are never justified;⁴⁶ moreover, he suggests we should feel a certain degree of friendship for all our fellow humans,⁴⁷ and friendship brings with it obligations of justice proportionate to the friendship.⁴⁸ (As for universality, most rights theorists provide for some limitation on the scope of rights for those whose rational capacities are diminished; the main difference between Aristotle and modern thinkers is simply that he regards many more people as rationally impaired than we do.)⁴⁹ Hence there is no good reason to deny that Aristotle recognizes prepolitical rights.

⁴⁴Miller, *NJR*, 88.

⁴⁵There is a sense in which rights can be possessed in solitude. Just as salt remains soluble even in the absence of water, I may be said to possess a right so long as it is true that others *would* be bound to treat me in certain ways, if they and I were ever to meet. One might call this a right to a conditional. But Aristotle, with his frequent talk of different levels of potentiality and actuality, should have no problem with rights-in-solitude in this sense.

⁴⁶See *NE* 1107a9–26.

⁴⁷See *NE* 1155a16–31.

⁴⁸See *NE* 1159b34–1160a8.

⁴⁹Yet even to natural slaves we are said to owe a certain level of justice, because they are (minimally) human and so a candidate for a limited kind of friendship; *NE* 1161a32–b8. Hence Aristotle's justification of the institution of slavery (*Politics*, book 1) must appeal to the interests of the slaves.

IV

Does Aristotle Assign High Intrinsic Value to Liberty? Miller's Third Concession is that Aristotle, unlike the modern liberal, regards liberty as having only an instrumental and peripheral value. Is this concession correct?

In considering the Aristotelian evaluation of liberty, Miller contrasts Aristotle with Locke:

Locke implies that freedom is a central defining condition of the human end. . . . For Aristotle, also, freedom has its place, but its place is far more modest than for Locke. For Aristotle liberty is an external good necessary for virtuous activity but which can be possessed in excess. . . . The aim of the individual should not be unlimited liberty but moral perfection, which is achieved through conformity to the constitution.⁵⁰

What does Miller mean in calling liberty an "external good"? Aristotle divides all goods into three categories: goods of the body, goods of the soul, and external goods.⁵¹ By this definition, it is uncontroversial that liberty is an external good; that is, a person's liberty consists primarily in facts about his environment, rather than about his body or soul. Miller, however, appears to be using the phrase "external good" in a different sense, to mean a good external to well-being—that is, a good that is merely an instrumental means toward, rather than a constitutive element of, eudaimonia. For example, Miller writes: "Aristotle . . . evidently relegated liberty to the status of a *mere* external good."⁵² Furthermore, he proceeds to gloss this as the view that "freedom is only instrumentally valuable."⁵³

Thus it is time to pull out the subscripts once again. An external₁ good is one that is external to body and soul; that is, one that consists largely or solely in facts about the agent's environment. By contrast, an external₂ good is one that is external to the agent's well-being; that is, its value is purely instrumental. From the fact that liberty is an external₁ good, it does not follow that it is also an external₂ good. The precise status of external₁ goods in Aristotle's theory is a matter of considerable scholarly debate. However, the account of eudaimonia in book 1 of the *Rhetoric* certainly treats a good many external₁ goods

⁵⁰ Miller, *NJR*, 250–1.

⁵¹ See, for example, *Politics* 7.1.

⁵² Miller, *NJR*, 356 (emphasis added).

⁵³ *Ibid.*, 356 n. 46.

as components of well-being; and in his ethical works Aristotle tells us that character-friends (clearly an external₁ good) are to be valued for their own sake—that is, as intrinsically rather than merely instrumentally valuable. So there is no reason to suppose that all external₁ goods are also external₂ goods.⁵⁴

What, then, of liberty? An external₁ good, to be sure. But is it also an external₂ good?

Not necessarily. For Aristotle, freedom (ἐλευθερία) is the condition of not being a slave. And there is good reason to think that freedom from slavery is more than a merely instrumental good for Aristotle. In the *Politics* we are told that slavery is inconsistent with self-sufficiency (αὐτάρκεια).⁵⁵ Now self-sufficiency is one of the formal requirements set out in *Nicomachean Ethics*, book 1, as criteria for the supreme good. Thus it seems that a life of slavery is not merely causally but logically inconsistent with the good life. The *Nicomachean Ethics* confirms that subordination to another person, being slavish, is inconsistent with greatness of soul.⁵⁶ Likewise, Aristotle characterizes freedom as the condition of existing for one's own sake rather than for another.⁵⁷ "Existing for one's own sake" sounds more like a constituent of the eudaimonic end than like a mere external₂ means to that end. Further, we are told that virtuous people must be spirited, and that spiritedness involves an inclination toward freedom⁵⁸—and this seems to draw a close link between freedom and a central component of well-being. To be sure, none of these passages is decisive; but once it is recognized, as it should be, that Aristotle al-

⁵⁴One might be inclined to suppose that external₁ goods are excluded from well-being on the grounds that *Nicomachean Ethics*, book 1, defines eudaimonia as rational virtuous activity—a definition that encompasses psychic and perhaps bodily goods, but not external₁ ones. However, Aristotle goes on to qualify this definition by adding the stipulation "in a complete life." What this stipulation adds is not entirely clear; but one salient possibility, which would account for the *Rhetoric* passage and for the intrinsic value placed on friendship, is that "in a complete life" incorporates all those external₁ goods that have intrinsic value. Further evidence for this interpretation may be found in the fact that, again in book 1 of the *Nicomachean Ethics*, our welfare is said to be affected by what happens after our death. Yet once our body and soul no longer exist, nothing that happens after our death can either be or affect any psychic or bodily good. Thus our well-being must consist, in part, of external₁ goods.

⁵⁵See *Politics* 1291a10.

⁵⁶See *NE* 1124b31; cf. *Eudemian Ethics* 1233b36.

⁵⁷See *Metaphysics* 982b26.

⁵⁸See *Politics* 1327b19–1328a7.

lows some external₁ goods to be included in well-being, the most natural reading of these passages supports the inclusion of liberty as a constitutive element in eudaimonia.

Moreover, liberty plays a much more important role in Aristotle's political theory than Miller suggests. This is not to say that Aristotle is substantially like Locke; he is not. However, the difference between Aristotle and Locke lies not in the *kind* of value they place on liberty (it has an intrinsic value for both), nor does it lie in the *amount* of value liberty has for them (it has a high value for both). Rather, the difference between Aristotle and Locke lies in their differing conceptions of the *nature* of liberty.

The significance of liberty for Aristotle is not confined to the narrow case of chattel slavery. Aristotle, like his later liberal progeny, holds that oppressive political regimes are also instances of slavery; the term "despotic rule" covers both. Deviant constitutions are "despotic," that is, they treat their subjects like slaves; but properly "a polis is a community of those who are free."⁵⁹ The difference between legitimate rule and despotic rule is ordinarily said to be the fact that legitimate rulers rule with a view to the interest of the entire community, while despotic rulers rule with a view to their own interest only. The difference between a slave and a free person, then, is that a free person lives for his own sake, while a slave lives for the sake of another.⁶⁰

This Interest-Based Criterion for differentiating between freedom and despotism is, however, often accompanied by a distinct Consent-Based Criterion; Aristotle frequently suggests that legitimate governments have the consent of the governed, while despotic governments rule against the people's will.⁶¹

Interest-Based Criterion: Citizens are free, and ruled justly, only if they are ruled in their own interest.

Consent-Based Criterion: Citizens are free, and ruled justly, only if they are ruled with their own consent.

Miller thinks that Aristotle intends popular consent to count as a mere indicator, rather than an actual precondition, of the justice of the constitution:

⁵⁹*Politics* 1279a21.

⁶⁰Thus *Politics* 1279a17–21 agrees with *Metaphysics* 982b26.

⁶¹See *Politics* 1285a27–b21, 1295a15–24, 1313a5, 1324b22–36.

Aristotle gives no indication of . . . treating the consent of the governed as a *justification* for political authority. Rather, his view is that the voluntary compliance of the subjects to political rule is *evidence* that the political rule is justified.⁶²

Yet Aristotle suggests otherwise:

Yet it would, like as not, seem highly absurd to those willing to reflect, if this should be the task of the πολιτικοῦ: to be attending to how he can rule and despotize (δεσπόζει) over his neighbors, both those who are willing and those who are not willing. For how can that be πολιτικόν, or appropriate to a lawgiver, which at any rate is not even lawful? Now to rule out only rightly but wrongly is unlawful, and to dominate is not also to do so rightly. Nor yet do we see this in the other sciences; for it is not the task (ἔργον) of a healer, nor of a steersman, to either persuade or coerce, the one his patients and the other his passengers [but only to persuade them]. But most people seem to think despotic art is πολιτικὴν. And precisely what they each will say is neither right nor advantageous with regard to themselves, this they are not ashamed to practice toward others; for they seek rightful rule for themselves, but toward others they have no concern for the things that are right.⁶³

This passage appears to be in part a reply to one of Plato's arguments in the *Politicus*. In that dialogue, Plato initially treats the presence or absence of consent on the part of the governed as the mark that distinguishes legitimate from despotic government;⁶⁴ but upon further reflection he abandons the Consent-Based Criterion, on the grounds that governing is a skilled art like medicine, and the test of correct medical practice is not whether the patient consents or not, but rather whether the physician can prescribe the correct treatment.⁶⁵ The true πολιτικός, Plato concludes, is not one who rules over willing subjects, but rather one who rules wisely, be his subjects willing or unwilling. The wording of the Aristotle passage strongly suggests he has this argument from Plato in mind; and he replies to it by turning Plato's physician analogy against him. Physicians—and other practitioners of skilled arts—do not impose their services by force on unwilling clients; why should the statesman be different? Aristotle simply denies Plato's assumption that the consent of the patient is irrelevant to the ἔργον of medicine; and he insists that to rule against the will of the ruled is a violation of law and justice. (Aristotle can only mean natu-

⁶² Miller, *NJR*, 273.

⁶³ *Politics* 1324b22–36; cf. 1333b5–1334a10.

⁶⁴ Plato, *Politicus* 276d–277a.

⁶⁵ *Politics* 291e–293e.

ral law and natural justice here.) There is no suggestion that lack of consent is merely evidence of unjust rule; Aristotle clearly takes rule without consent to be unjust in itself.

Aristotle does seem, then, to employ two different criteria to distinguish despotism from freedom: the interest of the governed, and the consent of the governed. Yet this is quite surprising. It might not be so surprising in a thinker with a subjectivist view of well-being, for then we might expect the desires of the governed and the interests of the governed to coincide. However, Aristotle thinks people can be, and indeed often are, mistaken about their own interests; they tend to be one-sided in their judgments, identifying as the whole of well-being what is at best merely one component of it. On a view like Aristotle's, there is no guarantee that what would most benefit the people will coincide with what the people are most likely to consent to. Why, then, does Aristotle employ the Consent-Based Criterion at all?

A possible answer is that not to be ruled against one's will is a component of well-being. Freedom, in the consent-based sense, may not be sufficient for attaining the highest good, but it is necessary: necessary not only instrumentally, but constitutively. A person who is being dragged kicking and screaming toward the good life by a benevolent government is decidedly not interacting with others on the basis of reasoned cooperation; to that extent, such a person is living a less than fully human life, and *ipso facto* is not achieving full *eudaimonia*. A central part of a political life is voluntary cooperation with others; and voluntary cooperation is just not the sort of thing that can be crammed down people's throats. Freedom, in the consent-based sense, is in the interest of anyone who is not a natural slave.⁶⁶ Hence, for Aristotle, the Interest-Based Criterion of freedom entails the Consent-Based Criterion. Thus the consent of the governed is a prior condition (and not merely a posterior sign) of a constitution's being non-despotic, and therefore of its being just.

Nor can the consent of the governed be merely the consent of a majority. As Miller has convincingly argued, Aristotle takes the common good at which the polis aims to be the mutual advantage, not

⁶⁶Insofar as they are (minimally) human, reasoned cooperation is the good for natural slaves too. Their problem is that they are incapable of running their lives by reason, and so cannot fully achieve the good; they must therefore settle for the closest approximation to that good of which they are capable: namely, carrying out the orders of someone whose rational faculties *are* fully functional (in other words, a Greek adult male).

merely the overall advantage.⁶⁷ That is, the polis must promote the good of each and every citizen. If freedom, in the consent-based sense, is an essential component of well-being, then the polis, to be legitimate, must secure *unanimous* consent—as Aristotle himself recognizes when he makes unanimous consent a criterion of governmental legitimacy.⁶⁸

A problem arises here, however. If consent is a precondition for well-being, then all paternalistic legislation, it seems, must be self-defeating; any measure designed to foster the well-being of the governed will necessarily frustrate that end by depriving the governed of the freedom essential to that well-being. Yet Aristotle is, famously, no foe to paternalistic legislation. Moreover, he makes it clear that the government's decisions will not rely on moral suasion alone to secure compliance with its decisions; indeed, he insists⁶⁹ that the effectiveness of government depends on its possession of an organized coercive power.⁷⁰ Yet if government is to impose its will by force, what

⁶⁷Miller, *NJR*, chapter 6.

⁶⁸See *NE* 1167a26–b16; *Politics* 1294b34–39. The *Politics* passage speaks of the consent of every *portion* of the polis, which might be taken to mean, as Everson translates it, “the general willingness of all *classes* in the state to maintain the constitution”; (emphasis added) *Aristotle: The Politics*, trans. Stephen Everson (Cambridge: Cambridge University Press, 1988), 95. However, Miller argues convincingly (*NJR*, 143–4) that by a “portion” [μῶριον] of the polis Aristotle ordinarily means an individual citizen, not a class or faction.

⁶⁹*NE* 1180a14–24; *Politics* 1286b27–33; cf. 1328b17–12, 1332a12–16.

⁷⁰This insistence is actually rather odd, given that the government of a Greek polis ordinarily had remarkably little in the way of an organized coercive force: “The ancient city-state had no police other than a relatively small number of publicly owned slaves at the disposal of the different magistrates [and] the army was not available for large-scale police duties until the city-state was replaced by a monarchy. . . . The ancient city-state was a citizen militia, in existence as an army only when called up for action against the external world. [Yet] a Greek city-state or Rome was normally able to enforce governmental decisions. . . . If Greek and Roman aristocrats were neither tribal chieftains nor feudal war lords, then their power must have rested on something else . . . [namely], their wealth and the ways in which they could disburse it. . . . [Solon established] the right given to a third party to intervene in a lawsuit on behalf of someone who had been wronged. . . . No classical state ever established a sufficient governmental machinery by which to secure the appearance of a defendant in court or the execution of a judgment in private suits. Reliance on self-help was therefore compulsory and it is obvious that such a situation created unfair advantages whenever the opponents were unequal

happens to rule by consent?⁷¹

One reply Aristotle could make is that he is concerned to approximate the ideal if he cannot achieve it fully. Consent may be a component of the highest good, but it is not the only component, and it may not be the most important component. Aristotle might have in mind something like the following ranking:

Consent: 1 point

Exercise: 2 points

(A) Best situation: The citizens voluntarily exercise.

Score: 1 (consent) + 2 (exercise) = 3

(B) Second-best situation: The citizens are forced to exercise.

Score: 2 (exercise) = 2

(C) Worst situation: The citizens refuse to exercise.

Score: 1 (consent) = 1

Aristotle can agree that consent is required for the best situation, (A), while still preferring (B) to (C). If the citizens are adamant in their unwillingness to exercise, then they will not do so voluntarily, and (A) is unavailable. In that case, the rulers are faced with a choice between two evils, and (B) may then be the lesser evil. In this spirit, Aristotle notes that punishment would be no part of the ideal polis, where all the citizens are virtuous; but so long as we fall short of that ideal and some citizens continue to commit crimes, it is better to punish the criminals than to let crime flourish.⁷²

In fact, however, this is not precisely Aristotle's solution. For Aristotle, liberty seems to be primarily a matter of consent to the constitution, rather than to individual edicts and statutes enacted under the authority of that constitution. In this context it is important to distinguish between *ἐλευθερία* and *ἐξουσία*. Both these words can be

in the resources they could command. The Solonic measure and [similar] Roman institutions . . . were designed to reduce the grosser disparities, characteristically by a patronage device rather than by state machinery"; M. I. Finley, *Politics in the Ancient World* (Cambridge: Cambridge University Press, 1994), 18–24, 45, 107. Aristotle may be thinking in terms of "self-help" to enforce the laws at *Politics* 1328b7–12.

⁷¹A similar puzzle is raised, though not answered, by Xenophon at *Recollections of Socrates* 1. 2. 40–7.

⁷²See *Politics* 1332a12–16.

translated as “freedom” or “liberty,” but Aristotle remarks that ἐλευθερία does not necessarily bring ἐξουσία in its train:

For all things are ordered together in relation to one end; but, just as in a household, to those who are free (ἐλευθέροις) it is least open [ἥμισυ ἔξεστιν; note that ἔξεστιν is the verb form of ἐξουσία] to act as chance dictates, but rather, all or most things are ordained, whereas for slaves and beasts little is ordained toward the common end, and most is as chance dictates.⁷³

An ἐξουσία is a specific legal permission to do such-and-such (say, to alienate one’s property or not); ἐλευθερία, on the other hand, represents the general condition of not being ruled against one’s interest and without one’s consent. ἐλευθερία is for the most part a matter of consent to the constitution as a whole, while ἐξουσία are specific freedoms one is allowed under that constitution. Hence, if one consents to a rather strict and severe constitution, one will then have ἐλευθερία without having much at all in the way of ἐξουσία. Paternalistic legislation may violate ἐξουσία, but it is no threat to ἐλευθερία, so long as one consents to the government that authorizes that legislation. The widespread impression that Aristotle is relatively unconcerned about freedom is largely correct if by freedom we mean ἐξουσία; while Aristotle does attach some value to certain ἐξουσία (notably property rights), the protection of ἐξουσία is not a high-priority concern for him. With ἐλευθερία, however, it is otherwise; this is the point at which consent of the governed becomes a precondition for governmental legitimacy.

For the modern liberal, ἐλευθερία is inseparable from ἐξουσία.⁷⁴ Aristotle is not unfamiliar with conceptions of ἐλευθερία that put ἐξουσία at center stage. This was the ideology of the Athenian democrats:⁷⁵ “And one sign of liberty is living as one wishes; for this, they say, is the mark of liberty—since not living as one wishes is the mark of a

⁷³*Metaphysics* 1075a18–23 (author’s translation); the translation is based on Werner Jaeger, ed., *Aristotelis Metaphysica* (Oxford: Clarendon Press, 1957).

⁷⁴At least in principle. In recent times liberal theory has, however, undergone something of a shift in emphasis from ἐξουσία to ἐλευθερία; see Roderick T. Long; “Immanent Liberalism: The Politics of Mutual Consent,” *Social Philosophy and Policy* 12 (summer 1995): 1–31.

⁷⁵Benjamin Constant likewise explicitly makes Athens an exception to the generalizations drawn in his famous essay “The Liberty of the Ancients Compared With That of the Moderns,” in *Political Writings*, trans. Biancamaria Fontana (Cambridge: Cambridge University Press, 1988), 311–12, 315–16.

slave."⁷⁶ However, Aristotle rejects the democratic conception of ἐλευθερία:

It is thought that . . . doing whatever one wishes counts as being free (ἐλεύθερον). Thus, in democracies of that sort, each person lives as he wishes. . . . But this is base; for one should not deem it slavery, but rather salvation, to live according to the constitution.⁷⁷

Note that Aristotle is not saying that the democrats are mistaken in valuing liberty. Rather, he is saying that they have the wrong conception of liberty; they think that subjection to the constitution is incompatible with liberty, whereas Aristotle thinks it is perfectly compatible, so long as that subjection is voluntary—even if one's range of options under that constitution is severely restricted. Aristotle's focus is on consent to the political framework, rather than on consent within the political framework. Liberalism, of course, has traditionally been concerned with both; thus Aristotle's concern with consent-to makes him an important precursor of liberalism, while his relative unconcern with consent-within still places him well outside the liberal pale.

How is Aristotelian consent-to expressed? Is actual political participation required—if only via the ballot box? Or is merely staying in town, accepting the benefits of law, and not rebelling, a sufficient sign of consent, à la Plato's *Crito*?⁷⁸ This is not an easy question to answer. Aristotle certainly accepts the following principle:

The Merit Principle: People have a right not to be ruled by their equals in merit except in rotation, and not to be ruled by their inferiors in merit under any circumstances.

Aristotle makes no exception for consent; that is, he does not say that rule by one's inferiors is legitimate if the superior consents to be so ruled; on the contrary, he suggests that superiors who have thus far put up with being ruled by inferiors would be justified in rebelling.⁷⁹

Under ordinary circumstances, the Merit Principle translates into a right to political participation: Where citizens are roughly equal in

⁷⁶*Politics* 1317b10–13.

⁷⁷*Politics* 1310a30–6.

⁷⁸Strictly speaking, only the first two (staying in town and accepting benefits) could count as consent by the standards of the *Crito*, since Plato's Socrates does not regard rebellion as a permissible option under any circumstances. However, Aristotle is more favorable to rebellion; see Miller, *NJR*, 304–8.

⁷⁹See *ibid.*, 305.

merit, all deserve to participate equally, and the result is meritocracy.⁸⁰ Where there is some disparity in merit, the superior minority deserve full political rights—but the inferior majority deserve the limited right of the franchise, since in their collective capacity they are at least the equals of the minority in judgment, although individually they are not qualified to hold offices;⁸¹ still, everyone has a right to political participation at some level or other, and the result is polity or something like it. But, notoriously, in the event (unlikely though Aristotle thinks it) that one or a small number of “godlike” persons so far outweigh the rest of the citizens in individual quality as to override the latter’s advantage in collective quality, the Merit Principle entails that only these persons of godlike virtue have any right to political participation; everyone else is excluded, and the result is the remaining correct constitution, kingship.⁸²

If the Merit Principle is to be consistent with the Consent-Based Criterion, then political participation must not after all be necessary for consent to count as legitimating; mere passive consent must be enough. For otherwise kingship could not pass both tests—as it must if it is to be just. Yet this result is surely surprising; for a number of passages suggest that no regime that denies its free subjects the right of political participation can truly meet the Consent-Based Criterion. Aristotle tells us that exclusion from political participation is a great dishonor⁸³ that effectively transforms citizens into resident aliens⁸⁴ at best and virtual slaves⁸⁵ at worst. Perhaps this is so only when the rulers doing the excluding fall short of godlike virtue. Still, political par-

⁸⁰“Meritocracy” is arguably the least misleading translation of Aristotle’s ἀριστοκρατία, for two reasons. First, “aristocracy” has become for us an almost purely descriptive notion, lacking the normative force of ἀριστοκρατία (“rule by the best”). Second, translating ἀριστοκρατία as “aristocracy,” a term with strong connotations of hierarchy and subordination, obscures the fact that Aristotle’s ἀριστοκρατία is actually more egalitarian than his πολιτεία—since there are superiors and inferiors in a πολιτεία, but none in an ἀριστοκρατία; in Aristotle’s ideal meritocracy, all the citizens are (roughly) equally meritorious and so have equal rights (*Politics* 1286a35–b13, 1288a1–15, 1293b1–12, 1332a33–1333a15)—and all the noncitizens are either resident aliens or natural slaves (*Politics* 1277b34–1278a13; 1326a16–22; 1329a25–6; 1330a25–33; 1342a17–20). One can only describe Aristotle’s use of the term ἀριστοκρατία as outrageously revisionist and slyly subversive.

⁸¹See Miller, *NJR*, 261–2.

⁸²The three correct constitutions are kingship, meritocracy, and polity.

⁸³See *Politics* 1281a30.

⁸⁴See *Politics* 1278a35.

⁸⁵See *Politics* 1274a15–18, 1295b19–23.

ticipation is such a paradigmatic Aristotelian example of virtuous practical activity that it's difficult to imagine how a polis designed to achieve the good life for political animals could legitimately forbid its citizens a share in the process of settling their common affairs through rational discussion.

Miller resolves the conflict by downplaying the central place of political participation in Aristotle's conception of the good life: "some individuals may possess complete ethical virtue even if they do not have the opportunity to participate in political rule. . . . It is possible for a person to lead a happy virtuous life even if there is no occasion for political activity."⁸⁶ Miller's main evidence for this conclusion is a passage where Aristotle tells us that a private person (ιδιώτης) is no worse off than a person with great power (δυνάστης).⁸⁷ However, an ιδιώτης is presumably someone without political office, not necessarily someone entirely disenfranchised. Socrates, for example, calls himself an ιδιώτης in the *Crito*, although he not only had voting rights in the Assembly but had even served on the Council. Aristotle himself seems to suggest that the franchise constitutes the absolute minimum of political participation needed to satisfy the Consent-Based Criterion;⁸⁸ yet kingship fails to meet even that low standard.

The solution, then, is most likely this: A person ruled by a godlike king, and so forbidden political rights, is indeed missing something valuable, and as a result is not living the best possible life; granting such a person political rights, however, would not remedy the situation. The absolutely best life would be to *be* a person of godlike virtue; part of the price of falling short, by however little, of the ideal standard is the consequent conditional liability to be subject to a godlike ruler, should one come along. In such a case, one is faced with a choice of evils: give up one's right to political participation, or commit the injustice of ruling one's superior. In the face of such a choice, the acme of eudaimonia is not an option anyway; but loss of political rights may be the lesser of two evils, since one can still be substantially happy without political rights,⁸⁹ whereas to rule without sufficient merit, no matter how noble one's intentions, is to commit an

⁸⁶ Miller, *NJR*, 238–9.

⁸⁷ See *NE* 1179a3–9.

⁸⁸ *Politics* 1274a15–18.

⁸⁹ See *NE* 1179a3–9.

injustice that necessarily undermines one's own well-being.⁹⁰ Meritocracy might then seem to have the advantage over kingship, since it faces no conflict between political participation and justice, but allows its citizens to enjoy both goods at once. On the other hand, however, kingship has this advantage over meritocracy: a kingship instantiates godlike virtue in its government, while a meritocracy does not. This may explain why kingship and meritocracy each have some claim to be the "best" constitution;⁹¹ each has some advantage that the other necessarily lacks. Of course, this whole trade-off could be avoided if a super-meritocracy could be established in which *all* the citizens possessed godlike virtue; in such a case, full political participation would not run afoul of the Merit Principle. However, such a possibility is so utopian that Aristotle does not even bother to mention it.⁹²

V

Two Modern Liberties: Arms and Property. We have seen that liberty, understood as the condition of being subject to no authority except by one's own consent, is an intrinsic value for Aristotle, and one that serves, at least in ordinary circumstances, as a crucial precondition for the legitimacy of political authority.⁹³ Thus far, then, Aristotle is far closer to the modern liberal tradition than Miller's Third Concession allows. However, I have also conceded that the Third Concession is correct to the extent that the liberty it seeks to downplay in Aristotle is not consent-to but consent-within—in short, the panoply of rights protecting individual choice, so precious to modern liberals. Before passing to the examination of the Fourth Concession, it is important to qualify this endorsement of the Third Concession in regard to consent-within, by noting two instances in which Aristotle antici-

⁹⁰See *Politics* 1325a34–b15.

⁹¹See *Politics* 1289a30–5.

⁹²Such an idea would be explored in the generation after Aristotle, for example, by Zeno the Stoic.

⁹³"Every Man being . . . naturally free . . . nothing [is] able to put him into subjection to any Earthly Power, but only his own Consent"; John Locke, *Second Treatise* 8.119; cf. Richard Overton, *An Arrow Against All Tyrants and Tyranny in The Levellers in the English Revolution*, ed. G. E. Aylmer (Ithaca: Cornell University Press, 1975), 68–70.

pates the liberal tradition's concern for individual liberties under the constitution: the right to bear arms, and the right to private property.⁹⁴

Aristotle makes possession of arms a precondition for political rights: "The constitution must be confined to those who bear arms."⁹⁵ It follows that the right to bear arms is guaranteed to all citizens.⁹⁶ One function of this right is the practical one of ensuring domestic tranquility and providing for the common defense;⁹⁷ but Aristotle is also concerned with resistance to despotism. Thus he advises that the general populace be sufficiently well-armed to form a collective force capable, if necessary, of outmatching the armed force of a government grown tyrannical.⁹⁸

Indeed, Aristotle regards civilian disarmament as tantamount to slavery. In criticizing the constitutional proposals of Hippodamus, Aristotle remarks:

One might raise a difficulty, first, about the division of the body of polis-members. For the artisans, and the farmers, and those having arms, all share in the constitution; yet the farmers have no arms, and the artisans have neither land nor arms, so that they become virtual slaves to those possessing arms.⁹⁹

It would seem, then, that a polis must respect the right to bear arms in order to meet the Consent-Based Criterion. Indeed, the refusal to trust the populace with arms Aristotle calls a vice common to tyranny and oligarchy¹⁰⁰—two constitutions that violate this criterion. Moreover, possession of arms also provides the people with a means of expressing—or withholding—their consent: "Those who control the arms, are also in control of whether the constitution survives or not."¹⁰¹ Aristotle is presumably thinking of the power an armed populace has to resist abuses of power, or even to overthrow a despotic government by force of arms; in that respect his argument is an important

⁹⁴At least, these rights were central to the liberal tradition before this century.

⁹⁵*Politics* 1297a30–b2; cf. 1329a10.

⁹⁶There is no indication, however, that this is an *optional* right. That is, Aristotelian citizens may have a right to bear arms, but it does not follow that they also have a right *not* to bear arms. In this respect Aristotle departs from the spirit of liberalism—although it must be said that not all liberals who have defended the right to bear arms have conceived it as an optional right.

⁹⁷See *Politics* 1328b7–10; cf. 1291a7–9.

⁹⁸See *Politics* 1286b33–40.

⁹⁹*Politics* 1268a16–20.

¹⁰⁰See *Politics* 1311a8–13; cf. Xenophon, *Hellenica*, Book 2.

¹⁰¹*Politics* 1329a11–12.

precursor of traditional liberal defenses of the right to bear arms.¹⁰² However, there is a second respect in which those who bear arms are in a position to decide the fate of the constitution: by refusing to use their arms in defense of the state, an armed citizenry can pressure those in power to make concessions.¹⁰³

Let us now turn to the right of private property. Miller correctly remarks that Aristotle does not defend a Lockean account of property acquisition through the mixing of one's labor with unowned resources.¹⁰⁴ What should not be overlooked, however, is the extent to which Aristotle does lay the groundwork for such an account. Aristotle, like the Lockean liberal,¹⁰⁵ insists that one's property is an extension of oneself;¹⁰⁶ it is for this reason that our property is so precious to us, as something that is our own.¹⁰⁷ Most significantly, something becomes this sort of extension of ourselves, and therefore precious to us, by being produced by us:

Each person cherishes his own work more than he would be cherished by the work if it became ensouled. This happens most of all, like as not, in the case of poets; for they cherish their own poems excessively, holding them dear as offspring. . . . Now the cause of this is that existence is choiceworthy and lovable for all, and we exist in virtue of activity (for we exist in virtue of living and acting), and the work is, in a way, the producer in activity. He holds the work dear, then, because he holds existence dear as well. And this is natural, since what he is potentially, the work manifests in activity.¹⁰⁸

Hence we have the same sorts of reasons (though not in the same way) for loving our property that we have for loving our friends. (Indeed, the precious value of calling something one's own is invoked by Aristotle against both the abolition of private property and the abolition of the family.) Furthermore, our friends, though external goods,

¹⁰²Cf. Alexander Hamilton, *The Federalist* 29; James Madison, *The Federalist* 46; Noah Webster, *Examination into the Leading Principles of the Federal Constitution* (1787); Michael Collins, "Remarks on the Amendments," *Fayetteville Gazette*, 12 October 1789.

¹⁰³Cf. the strategy frequently employed by the Roman plebs, as described by Livy in the first ten books of his *History of Rome from its Foundation*.

¹⁰⁴See Miller, *NJR*, 328.

¹⁰⁵See Locke, *Second Treatise*, 5.26–7; Leon Wolowski and Émile Levasseur, "Property," in *Lalor's Cyclopaedia of Political Science* (Chicago: M. B. Cary and Co., 1884), 3:392–3; Hegel, *Philosophy of Right*, §§40–71.

¹⁰⁶See *NE* 1134b10–14, *Politics* 1255b11; cf. *Politics* 1254a7–18.

¹⁰⁷See *Politics* 1262b22–3, 1263a40–b5; *Rhetoric* 1371b12–28.

¹⁰⁸*NE* 1167b31–1168a15.

must be components of well-being, because they are to be loved for their own sake, and anything valued for its own sake (rather than as a mere means to some further end) must be an intrinsic component of eudaimonia. This tells against Miller's suggestion¹⁰⁹ that Aristotle's endorsement of the intrinsic value of property in the *Rhetoric* need not be taken seriously.¹¹⁰

VI

Is Aristotle's Theory of Rights Based on Autonomy? Miller's Fourth Concession to the communitarian interpreters of Aristotle is that the theory of rights defended in the *Politics* differs from modern liberal theories in placing no particular weight on autonomy.¹¹¹ Is this concession correct?

It might or might not be so, depending on which conception of autonomy one has in mind. I want to close by pointing out the respects in which Aristotle's rights theory has important affinities with one modern liberal autonomy-based rights theory ordinarily thought to be miles away from Aristotle's concerns: the Kantian theory.

For the Kantian, human beings have rights because they have autonomy, in the metaphysical sense of having the capacity to transcend the determining influence of natural inclinations in order to choose freely. Aristotle's approach is similar, though without the "two-worlds" approach characteristic of traditional Kantianism. Aristotle's notorious theory of natural slavery has as its less often noticed corollary a theory of natural freedom:¹¹² just as those human beings who lack the fully functional capacity to run their lives by reason deserve to be enslaved, so those who do possess that faculty in good working order have the right to be free.

Our rational capacities give us the ability to stand in judgment over our natural impulses instead of being controlled by them; natural slaves lack this ability entirely, while free women are said to have it only imperfectly (the capacity is ἀκυρον, noncontrolling),¹¹³ while

¹⁰⁹ See Miller, *NJR*, 314–15.

¹¹⁰ See *Rhetoric* 1360b20–8.

¹¹¹ See Miller, *NJR*, 114–15.

¹¹² See *Politics* 1.3–8, 12–13.

¹¹³ See *Politics* 1260a13.

free adult Greek males have it in complete functionality (which is not to say that they always make proper use of it). Anything which lacks a rational capacity is the deterministic slave of the forces acting upon it; in a given set of circumstances, a nonrational potentiality can only produce a single outcome.¹¹⁴ The rational capacities of humans in normal condition, by contrast, account for their possession of free will and moral responsibility—the fact that at least some actions are up to us to perform or not, as we choose.¹¹⁵ Human free choice breaks the chain of necessitation and allows us to transcend the natural order.¹¹⁶ Rational potentialities are what enable us to choose the bad as well as the good,¹¹⁷ because they enable us to control how the end appears to us;¹¹⁸ thus rational potentialities are also at the root of our liability to weakness of will,¹¹⁹ since the key to weakness of will lies in our capacity to focus our attention on some values and avoid thinking of others.¹²⁰ Thus Aristotle's theory of the right to freedom, like the Kantian liberal theory, bases itself on the metaphysico-ethical capacity of autonomous rational agents to transcend the motivational force of sensible appearances.

The goal of this essay has not been to make a liberal out of Aristotle. Clearly, he is no liberal. On the other hand, I think a broadly Aristotelian account of human nature and the human good provides the most attractive foundation for a liberal political theory. That is one of the reasons I welcome Miller's eloquently persuasive case for attributing a theory of rights to Aristotle—though it is also one of the reasons I have chided Miller for not going far enough.

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¹¹⁴ See *Metaphysics* 1047b35–1048a21.

¹¹⁵ See Aristotle *Eudemian Ethics* 1222b41–1223a15; *NE* 1113b2–1114a3; *Magna Moralia* 1187b10–20, 1189b37–1190a2.

¹¹⁶ See Aristotle, *On Interpretation* 18b31–19a12; *Metaphysics* 1027a29–b16.

¹¹⁷ See *Eudemian Ethics* 1227a21–32.

¹¹⁸ See *NE* 1114a30–1115a3.

¹¹⁹ See Aristotle, *On the Soul* 433a1–4; *Problems* 956b33–37.

¹²⁰ See *NE* 1146b31–1147a24; cf. *Eudemian Ethics* 1225b10–16. The interpretive claims in this paragraph are controversial, to say the least; I have defended them in more detail elsewhere. See Roderick T. Long, "Free Choice and Indeterminism in Aristotle and Later Antiquity." (Ph.D. diss., Cornell University, 1992; and Roderick T. Long, *Aristotle on Fate and Freedom* (unpublished manuscript).