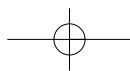
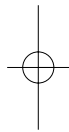
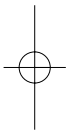
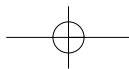
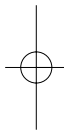
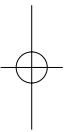


# READING RASMUSSEN AND DEN UYL





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## Critical Essays on Norms of Liberty

Aeon J. Skoble



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## Preface

When I was an undergraduate, it seemed as though liberal political theory, and indeed ethics generally, came in two flavors: consequentialist and deontological. Kant or Bentham? Locke or Mill? Happily, the renaissance of interest in Aristotle which got started in the 1970s had spillover effects in moral and political philosophy: virtue ethics, and the use of virtue ethics as a possible groundwork for liberalism. Entering graduate school in the mid-1980s, I had already studied Locke, Mill, Rawls, and Nozick. I had also studied Aristotle, although at the time I could not see how he could have any connection to liberal political theory, and I couldn't articulate why I was uncomfortable with the appeal to Aristotle in such thinkers as MacIntyre. As I began pursuing independent research projects, however, I came across two anthologies of classical liberal theory, one edited by Tibor Machan, *The Libertarian Reader*, and one edited by Jeffrey Paul, *Reading Nozick: Essays on Anarchy, State and Utopia*. The essays in these volumes greatly expanded my horizons in a number of ways, not the least of which was introducing me to the neo-Aristotelian approach to grounding classical liberalism, and the two most articulate proponents of this approach, Douglas B. Rasmussen and Douglas J. Den Uyl. I immediately gravitated towards their work, finding it to be both technically impressive

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and substantively right, and by 1990 I was privileged to have made their acquaintance.

In 1991, they produced *Liberty and Nature: An Aristotelian Defense of Liberal Order*, which I found to be a persuasive and coherent argument. But Rasmussen and Den Uyl continued to work on the project: responding to critics, reformulating and strengthening parts of the argument, reevaluating methodological issues. They wrote many short pieces, both separately and together, and participated in conferences devoted to the themes they helped bring to the foreground. This continued work reached its apex in the 2005 release of *Norms of Liberty: A Perfectionist Basis for Non-Perfectionist Politics*. This book turned out to be even more comprehensive, and it struck me as having the potential to be hugely influential and important. I therefore organized a symposium on it, to meet at the December 2005 meeting of the American Philosophical Association in New York City. The symposiasts raised a variety of interesting questions, to which Rasmussen and Den Uyl replied, and there was lively interplay with the audience. I learned shortly thereafter that there were also symposia on *Norms of Liberty* planned for the 2006 meetings of the American Political Science Association and the American Catholic Philosophical Association, partly confirming my suspicion that the book was as important as I thought it was. I contacted the organizers of those symposia, and the result is this book. What follows are, revised for publication of course, the proceedings of all three symposia, and then an omnibus reply essay from Rasmussen and Den Uyl. The contributors range from highly sympathetic to highly critical. If you have already read *Norms of Liberty*, I hope you find these essays interesting and illuminative. If you have not read *Norms of Liberty*, I hope they pique your interest enough to drive you to do so.

The symposium at the APA featured an introduction from Fred Miller and papers by myself, Edwin England, David Thunder, and Charlotte Thomas. From the APSA symposium we have here papers by Ken Grasso, Elaine Sternberg, and Sue Collins. The ACPA symposium featured papers by Denis Sullivan, Timothy Fuller, James S. Taylor, William Kline, and Peter Vedder. I would like to thank all of them for the careful thought and hard



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work they have put into this. In addition, I would like to express my gratitude to Patrick Dillon, Jessica Bradfield, Jonathan Sisk, and everyone at Lexington Books. I am also grateful to the following people for the many discussions which have helped me think about these themes over the years: Nick Capaldi, Mark Conard, Allan Gotthelf, Lester Hunt, Jonathan Jacobs, David Kelley, Irfan Khawaja, Loren Lomasky, Roderick Long, Tibor Machan, Eric Mack, James Otteson, John Pappas, Jeffrey Paul, Chris Sciabarra, Danny Shapiro, Tara Smith, and David Steele. I would like to thank my wife Lisa and our daughters Lydia and Madeleine for their support, including their toleration of my frequent conference travel. I am also very grateful to Brian Adam and Milo Schield for their generous support and encouragement.

The last and heartiest expression of gratitude, of course, is to Doug Rasmussen and Doug Den Uyl. Their support, encouragement, counsel, and friendship over the years have been invaluable, and I am deeply grateful for those things. I would also like to thank them for all the work they have done for moral and political philosophy over the last thirty years, and especially for writing *Norms of Liberty*.

Aeon J. Skoble

### 3

## Can the Political Priority of Liberty be Squared with the Ethical Priority of Flourishing?

David Thunder

One of the features of contemporary liberalism that many view as its Achilles' heel is its failure to connect the justification of political norms to the ingredients of a good, successful, or flourishing human life. Liberals often take themselves to be advancing a doctrine of right or an account of public goods that are viewed as instrumental to the good life, and believe they can reserve judgment about the constituents of a successful or flourishing human life to private individuals. But this self-conscious eschewal of debates about human flourishing leaves liberalism in an embarrassing and vulnerable position: when asked the inevitable question, "what has liberalism got to do with the good life?" the liberal can say very little of substance: he must simply assume that certain "primary goods" such as peace and prosperity are the necessary condition for *any* ethical aspirations. But without engaging the deep ethical questions such as the nature of a good life, this assumption seems smug and question-begging. And even if true, it is not sufficient to justify the liberal's commitment to the political primacy of freedom.

As I understand it, the basic project of *Norms of Liberty* is to provide an ethical justification for the political priority of liberty derived principally from a neo-Aristotelian, teleological, world-view. As somebody who is critical of "free-standing" liberalism, I am very pleased to see Douglas Rasmussen and Douglas Den

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Uyl offer a defense of liberalism that is rooted not in “free-standing” political norms but in a substantive account of human flourishing. Their willingness to engage ethical problems from the “ground up” so to speak, is not typical among defenders of liberalism. There is a refreshing intellectual honesty in Rasmussen and Den Uyl’s willingness to explore the deeper ethical foundations of their liberal commitments, which opens a space for genuine and meaningful dialogue. I hope to take advantage of that space in these brief remarks.

The main target of my critique of *Norms of Liberty* is the priority of liberty, or what Rasmussen and Den Uyl call “liberalism’s basic tenet,” namely, “[t]hat achieving and maintaining liberty should be the *central* and *primary* concern of the political/legal order” (p. 9). But before I go any further, in order to properly circumscribe the force of my critique, I would like to highlight the aspects of this project that I am in broad agreement with.

**Points of Agreement**

I join Rasmussen and Den Uyl in firmly rejecting Rawls’ and others’ aspiration to make political theory “free-standing” from deep and controversial philosophical commitments. I agree with them that any minimally plausible justification of politics must rely upon a philosophical anthropology, whether such reliance is acknowledged or not. Secondly, I am very sympathetic to the basic premise of their project, that is to say, that neo-Aristotelian ethics is the most appropriate basis upon which to argue for a free society. I share Rasmussen and Den Uyl’s rejection of moral skepticism, relativism, naïve universalism, and excessive individualism as pathologies engendered by modern Enlightenment and post-enlightenment philosophy, and I agree with them that such pathologies are not the inevitable concomitant of liberalism’s commitment to individual liberty and rights. I agree with Rasmussen and Den Uyl that the right and the good cannot be treated independently as Kant and (at least the early) Rawls be-

## Can the Political Priority of Liberty be Squared / 29

lieved. Finally, I agree with Rasmussen and Den Uyl that self-direction, individual contingencies, and practical wisdom play a central role in human flourishing incompatible with the imposition of a single monistic formula for flourishing, and that this role must be respected by any ethically sound political order.

### Can the Political Priority of Liberty be Squared with the Ethical Priority of Flourishing?

With these very significant areas of agreement highlighted, I hope the basis and force of my critique will be more evident. The principal target of my critique is the political priority of liberty proposed by Rasmussen and Den Uyl, and my critique can be summed up in one proposition; namely that the political priority of liberty cannot be reconciled with the ethical priority of flourishing. The first question to get straight is the target of my critique: what exactly is the normative weight of liberty in Rasmussen and Den Uyl's political philosophy? Early in the book, they assert their commitment to "liberalism's basic tenet," namely, "[t]hat achieving and maintaining liberty should be the *central* and *primary* concern of the political/legal order" (p. 9). Later, the priority of liberty is asserted in even more absolute terms: "individual rights override all other moral claims . . . when it comes to addressing an important but specific problem—what we have called 'liberalism's problem'" (pp. 92-93). "Liberalism's problem," as understood by Rasmussen and Den Uyl, is the following:

Since the structure provided by the political/legal order will rule over all equally, how can the universalism of *political/legal* structural principles square with the pluralism and self-direction required by human flourishing? Hence, how is it possible to have an ethical basis for an overall or general social/political context—a context that is open-ended or cosmopolitan—that will not require, as a matter of principle, that one form of flourishing be preferred to another? (p. 271)

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The question I will consider is whether or not the strict priority of liberty asserted by Rasmussen and Den Uyl in the political domain can be reconciled with the priority of flourishing admitted by Rasmussen and Den Uyl in the domain of relatively unrestricted personal action. The case I will make against assigning strict priority to liberty in the political sphere is an Aristotelian one, and therefore one Rasmussen and Den Uyl should appreciate. What I want to argue is that Aristotle's conception of practical reason and of practical wisdom is unified and directed towards the good in every sphere of life, in sharp contrast to many modern conceptions of practical reason (e.g., Hobbes, Smith, Descartes, Rawls) which allow for rigid partitions within practical reason, between instrumental and moral reasoning, or between the "right" and the "good," between political morality and ethics, and so on. I want to argue that the good agent, on this unified view of reasoning, always aims at doing what is good or conducive to all-round flourishing, both his own and that of his community. By contrast, Rasmussen and Den Uyl, while accepting this picture of practical wisdom at the personal or nonpolitical level, want to exempt political action from it, claiming that politics is quite distinct from the pursuit of perfection or flourishing, that it is constituted by the observance of "metanorms" that provide the conditions for the possibility of flourishing but are not an aspect of flourishing as such. As I will show below, this attempt to rigidly demarcate the political from the ethical is not warranted by the Aristotelian perspective assumed by Rasmussen and Den Uyl's arguments, and can only be justified, if at all, by an extremely demanding Kantian view of autonomy that is not argued for in this book.

**Norms and Metanorms**

Rasmussen and Den Uyl argue that the solution to "liberalism's problem"—that is, the problem of accommodating diverse forms of flourishing within a single social order—is to distinguish two levels of practical reasoning: one constituted by the norm or

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norms of flourishing, which every individual must be guided by in order to perfect himself; and another constituted by “meta-norms” of social and legal order, which, rather than directly conducing to flourishing, merely secure the conditions under which flourishing can occur. According to Rasmussen and Den Uyl, there are two types of norms, and a proper appreciation of the limited jurisdiction of the political order depends on a recognition of this distinction:

Norms are not, in fact, all of one type, differentiated by subject or thinker alone. It may be that some norms regulate the conditions in which moral conduct may take place, while others are more directly prescriptive of moral conduct itself. In light of this possibility, we believe it is not appropriate to say that liberalism is a “normative political philosophy” in the usual sense. It is rather a political philosophy of metanorms. *It seeks not to guide individual conduct in moral activity, but rather to regulate conduct so that conditions might be obtained where moral action can take place.* To contrast liberalism directly with alternative ethical systems or values is, therefore, something of a category mistake. (p. 34)

It is important to note that accepting the priority of liberty need not presuppose Rasmussen and Den Uyl’s distinction between norms and metanorms. It may be viewed simply as an application of practical reasoning to the political sphere. However, if the distinction is valid, it does seem to lend some support to the choice of giving content to political norms independently from substantive conceptions of human flourishing, since political reasoning about “meta-norms” now looks like a very specialized form of practical reasoning that is somehow set apart from practical reasoning about individual flourishing. Since I regard the procedural independence of political norms from flourishing as unwarranted, it is worth saying a bit about why Rasmussen and Den Uyl’s concept of meta-norms seems incoherent to me.

Essentially, my worry is that given the inherently social orientation and context of human flourishing, “liberalism’s problem,” insofar as it concerns the good of one’s society, is a

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problem that confronts individuals *qua* practical reasoners in pursuit of the good. Any solution to “liberalism’s problem” is a solution that requires certain actions on the part of individual agents, for example, compliance with law, respect for rights, and so on. The “rules of the game” or the rules that govern the conduct of an entire society, bear directly on the choices and actions of individuals, who must choose either to embrace or reject those rules and live with the consequences. It seems to me that I, as a responsible agent, have no other basis on which to accept or reject political norms than their compatibility with, and conduciveness to, human flourishing, both my own and that of my community. If I allow my conduct to be guided by political norms, I must view such conduct as an instance of my own flourishing, or at least as permitted or required by my flourishing. This is not the same as saying that political norms constitute a comprehensive guide to human flourishing—they provide a very incomplete and general guide to action, a broad constraint within which each individual must flesh out a virtuous plan of life and develop the interior dispositions characteristic of virtuous action. But for all that, political norms, insofar as they are legitimate or morally valid, are a practical guide for individual conduct no less than any other norm. Therefore, while political norms must be distinguished from ordinary ethical norms, I cannot agree with Rasmussen and Den Uyl’s assertion that liberalism “seeks not to guide individual conduct in moral activity, but rather to regulate conduct so that conditions might be obtained where moral action can take place.” Rather, liberalism, on a good day, does both: it guides moral activity, and creates conditions where further moral action can take place.

**The Priority of Liberty**

Now, I would like to turn to the main target of my critique: the priority of liberty. I do not believe this normative priority can be justified without recourse to some strong and distinctively modern doctrine of autonomy, for example, Kantian or Rawlsian contractarianism. But more importantly for our purposes, I do not

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think the arguments offered by Rasmussen and Den Uyl succeed in overcoming the main Aristotelian objections to the priority of liberty. Here is my simplified but hopefully fair-minded reconstruction of Rasmussen and Den Uyl's argument for the political priority of liberty:

1. *Liberalism's Problem*: The fundamental problem of politics is to find a shared social and legal framework within which diverse and potentially conflicting modes of flourishing can co-exist.
2. *The Pluralism of Flourishing*: Although we can identify many generic goods that all forms of flourishing must participate in, e.g. friendship, knowledge, bodily sustenance, etc., there is no universal, all-purpose formula for determining the appropriate weight of each good in a plan of life. There is a legitimate pluralism of forms of flourishing that is a function of individual circumstances and defies any single formula of flourishing to be imposed upon all.
3. *The Political Irrelevance of Substantive Judgments about the Place of Particular Goods in a Good Human Life*: Any political principle that settles the weighting issue by prioritizing some goods over others is illegitimate because it would be guilty of a principled bias in favor of some forms of flourishing and against others. This bias would be morally offensive both (a) because it would be unfair for our shared political system to benefit its members unevenly, and (b) because by disfavoring some forms of flourishing, it would deliberately interfere with or harm the self-directedness of some agents, a central and necessary condition of their flourishing.
4. *The Political Relevance of the Role of Self-Direction in a Good Human Life*: Unlike most generic goods, e.g. friendship and play, self-directedness is a central and constitutive feature of *every form of flourishing*. As Rasmussen and Den Uyl put it, "[r]egardless of the level of achievement or specificity, self-direction is a feature of all acts of human flourishing. Self-direction is what makes human flourishing



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a personal activity, rather than simply a behavioral act, on the one hand, or a static, nonrelational state of being, on the other" (p. 87). Therefore, the protection of the possibility for self-direction is a political function that is in the interests of all and is not biased towards some and against other forms of human flourishing.

5. *The Priority of Liberty*: The appropriate way of reconciling diverse forms of flourishing within a single society is to enforce public order in accordance with one simple principle: the priority of liberty. This principle, rather than any substantive judgments about human flourishing, is the exclusive justification for legal coercion. According to the priority of liberty, "[t]he individual, basic, negative right to liberty prohibits all forms of nonconsensual use or direction of persons. That basic right provides the ethical basis for legally proscribing all forms of initiatory physical force and authorizing the use of physical force only for the protection and preservation of the possibility of self-direction [and consequently, the possibility of flourishing] in society" (p. 280).

### **Steps 2 and 3: The Pluralism of Flourishing and the Political Irrelevance of Substantive Judgments about Flourishing**

Now that I have summarized the argument in its essentials, I want to explain why it does not convince me to accept the principle of negative liberty as a normative basis for politics. Let us consider the argument step by step: To begin with, I have no argument with step one, which states "liberalism's problem" as the problem (roughly) of reconciling diverse forms of flourishing within a single social system. But in my view, too much is made of step 2, the pluralism of flourishing. That there is a plurality of forms of flourishing and that no single formula of flourishing can be imposed upon all is not something I wish to dispute—on the contrary, it seems eminently sensible to me. However, it

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seems to me that Rasmussen and Den Uyl's denial of the possibility of making sound practical judgments about flourishing across persons, or of making impersonal comparisons across different forms of flourishing, can only be supported by an extreme construal of the pluralism of flourishing. For it is one thing to say that a single pattern of goods can be confidently advanced as *the* formula for human flourishing; and quite another to assert that *some patterns of goods are better than others* irrespective of the persons in whose lives they are instantiated, or that some forms of life and some actions are destructive of human flourishing no matter whose life is concerned.

What I want to argue here is that there are two types of generic judgment about human flourishing that a sensible version of moral pluralism must allow for: first, judgments about the intrinsic superiority of certain forms of flourishing over others; and second, judgments about the defectiveness of certain forms of life and actions or their inherent incompatibility with human flourishing. Both sorts of judgments (a) are informed by a conception of flourishing that goes beyond negative liberty; (b) are impersonal and general in scope (i.e., they apply to all persons) and (c) yet they respect the pluralism of forms of flourishing and the central role of practical reason in discerning the specific ingredients of *my* flourishing as distinct from anyone else's.

To illustrate my point, consider the following judgments: first, there is the judgment that a life spent raising a family and meeting the material, emotional, and spiritual needs of one's children over time, is better than a life devoted to collecting antique cars and maintaining them. Both ways of life have positive features to recommend them and neither life can be readily dismissed as evil or depraved, yet there is something more humanly enriching and rewarding about family life than the life of an antique car society. It is not that the antique-car collector is not flourishing to any degree as a person—there may be various respects in which he is developing his faculties and forming valuable relationships in his antique car society. But the form of flourishing he has chosen does not realize his human faculties and virtues as fully as a life as a husband and father could.

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Now, consider the second type of judgment: the judgment that this or that form of life is simply incompatible with human flourishing. A life devoted to gambling with all other goals subordinated to the goal of winning money seems to be one fitting example: such a life is consumed with a narrow project that is inherently individualistic and self-indulgent, and gives its protagonist little opportunity to develop the human virtues to a high degree, whether they be courage, generosity, humility, practical wisdom, justice, or temperance. Another example would be the life of a Don Juan, who goes out in search of love, but refuses to commit to any one person, and leaves a trail of hurt and resentment in his wake. Or consider the example of somebody who becomes addicted to heroin, and is at the beck and call of his cravings for this expensive drug. Even if he can afford to obtain the drug without resorting to stealing, the enslavement of his will that this addiction entails rules out such a life as a contender for genuine human flourishing. The point of adducing these examples is not to secure agreement on every detail, but to suggest that we can and do routinely make valid impersonal judgments about human flourishing that extend beyond negative liberty, and could very well bear on policymaking decisions.

**Step 4: The Political Relevance of the Role of Self-Direction in a Good Human Life**

Now, let us consider step 4 in the argument for the priority of liberty: the political relevance of the role of self-direction in a flourishing human life. The reason self-direction is considered a valid desideratum to ground political action is that it is universally necessary and central to *all* forms of human flourishing. I will concede for the purposes of argument that self-direction is indeed an essential constituent of all forms of human flourishing (though I would note in passing that this seems to raise a problem for whether infants can flourish qua human beings). The question is, what follows from this? Does the priority of liberty follow necessarily from the centrality of self-direction to flour-

**Can the Political Priority of Liberty be Squared / 37**

ishing? It does not, for at least four reasons: first, as I have already noted, there are *other* generic or universal features of flourishing lives, including properties they do not and cannot possess, that could be relevant from a policy standpoint. To insist on the priority of liberty is to insist that *other* structural features of flourishing, for example, the property of not being addicted to heroin, are consistently trumped by liberty. But I find no argument in this book for this proposition, and suspect it can only be sustained on a strong Kantian view of moral autonomy, which is not explicitly argued for. Secondly, contrary to what Rasmussen and Den Uyl seem to suggest, there is a very substantial array of possible positions between the unfreedom of a concentration camp and the freedom of a libertarian state. In between these two extremes, there may be certain forms of constraint that still allow a generous degree of free and unconstrained human action, and are compatible with human flourishing in general. For example, many people do not feel their agency or flourishing is significantly threatened by an elaborate regime of laws and tax codes, even when they happen to disagree with many of those laws and with many of the purposes to which their money is put. Thirdly, one possibility that Rasmussen and Den Uyl appear to neglect is a possibility suggested by Thomas Aquinas: namely, that the virtuous citizen may comply with a facially coercive law voluntarily, motivated by respect for political authority and the common good rather than the fear of punishment. If this is a real possibility, then for many people, much of the time, coercive regulation of their actions may be perfectly compatible with personal freedom and flourishing. Fourthly and finally, some people may find the motivation of punishment to be a support, not an enemy, of their freedom: for example, some may *want* to drive responsibly, but find the presence of a public scheme of sanctions helps them overcome their weakness of will and do what they know deep down is in their own and the public interest. What this discussion seems to suggest, in short, is that there is no necessary or in-principle opposition between legal coercion on the one hand, and freedom and human flourishing on the other, and thus that Rasmussen and Den Uyl do not offer a convincing ethical case for the political priority of liberty.

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### The Relation Between Liberty and Flourishing: A Request for Clarification

So far, I hope to have shown that at critical junctures in the argument for the priority of liberty, Rasmussen and Den Uyl make assumptions, both concerning the pluralism of flourishing and concerning the relation between legal coercion and flourishing, that cannot be sustained. I would like to conclude with one question that is less a challenge to the book's thesis than a request for clarification. *What is the precise relationship between the norm of negative liberty on the one hand, and the achievement of flourishing by humans on the other?* We are told that liberalism is a scheme of liberty designed to secure the conditions for the *possibility* of flourishing, but that liberalism is not concerned with the actual achievement or promotion of flourishing. In fact, it would appear that promoting flourishing is so far from the goal of liberalism that it is not even concerned with fostering conditions that render flourishing a probable outcome: As Rasmussen and Den Uyl put it, "[o]ur argument only shows that the political/legal order should protect the possibility of self-direction, not secure its exercise. . . . To protect the possibility of self-direction is still not the same as creating, inducing, or inciting self-directed actions" (p. 309–310). Thus, it would appear that real outcomes and consequences of government policies are of little or even no concern, from a legal or political or "metanormative" perspective. Whether flourishing actually or even tendentially occurs is politically of no relevance, or so it would appear.

This raises some interesting questions about the purpose of government action: Is it the case that liberalism is only concerned to promote the *bare logical possibility* that human flourishing could occur, or is it a more robust and realistic possibility—even probability—that is at issue? Is it really of no interest to liberalism whether or not its policies ultimately tend to favor human flourishing or merely render it *logically possible*? If the connection between freedom and flourishing is really so tenuous as logical compossibility, then Rasmussen and Den Uyl need to explain why liberalism takes such a restrained interest in

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the outcomes of its policies. I suspect that in doing so, they may have to rely upon a prior commitment to autonomy that simply trumps considerations of human flourishing in ways that an Aristotelian would find hard to explain.

### Conclusion

To sum up my reaction to *Norms of Liberty*, I would say that it offers a refreshing new voice in the debate about the nature and normative grounds of a free society. Though I disagree with the version of liberalism Rasmussen and Den Uyl propose, and ultimately find their derivation of it from neo-Aristotelian ethics unconvincing, this book will stimulate a valuable debate about the prospects for a *rapprochement* between liberal normative theory and neo-Aristotelian ethics. One of the most salient contributions of *Norms of Liberty*, at least in this reader's opinion, is its reminder that we must somehow rise to the challenge of grounding our political principles in a view of the good life without mistaking them for the whole of the good life; while one of its most significant shortcomings is its adoption of an absolute principle of negative liberty rather than a more moderate principle of freedom to be interpreted and applied by practical reason in conjunction with other requirements of human flourishing.