The Language of Rights: Towards an Aristotelian-Thomistic Analysis

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Abstract: Alasdair MacIntyre has argued that our contemporary discourse about "rights," and "natural rights" or "human rights," is alien to the thought of Aristotle and Aquinas. His worry, it seems, is that our contemporary language of rights is often taken to imply that individuals may possess certain entitlement-conferring properties or powers (typically called "rights") entirely in isolation from other individuals, and outside the context of any community or common good. In this paper, I accept MacIntyre's worries about our contemporary language of "rights"; however, I seek to show that some of our contemporary language or discourse about "justice" and "rights" is not altogether misguided, but does—in fact—reflect a properly critical (Aristotelian-Thomistic) understanding of what is meant by "justice" and "rights."

I. Introduction: The Problematic Character of our Language about "Rights"

In his ground-breaking work, *After Virtue*, Alasdair MacIntyre argues that our contemporary discourse about "natural rights," "human rights," or "the rights of man" is alien to the thought of Aristotle and Aquinas.[1] In fact, MacIntyre goes so far as to say that an Aristotelian-Thomistic thinker ought to regard "natural rights," "human rights," or "the rights of man" as fictions whose ontological status is no different from the ontological status of unicorns and witches:

> for the truth is plain: there are no such rights, and belief in them is one with belief in witches and unicorns. The best reason for asserting so bluntly that there are no such rights is indeed of precisely the same type as the best reason which we possess for asserting that there are no witches and the best reason we possess for asserting that there are no unicorns: every attempt to give good reasons for believing that there *are* such rights has failed.[2]

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In some of his later work, MacIntyre seems to have moderated his position regarding "rights," limiting himself mainly to claims about the conditions under which talk about "natural rights," "human rights," or "the rights of man" might be possible within the context of virtue ethics:

> it is clear that from the standpoint of virtue ethics, rights would not primarily provide grounds for claims made by individuals *against* other individuals or groups. They would instead have to be conceived primarily as enabling provisions, whereby individuals could claim a due place within the life of some particular community, and the question of what rights individuals have or should have would be answerable only in terms of the answers to a prior set of questions about what sort of community this is, directed towards the achievement of what sort of common good, and inculcating what kinds of virtues.[3]

Based on these two quotations from MacIntyre, one might be led to conclude that MacIntyre has gradually come around—though somewhat reluctantly—to accepting the view that it might be possible to talk about "rights" and "natural rights" within the context of virtue ethics, but only if such talk is subject to rather rigorous restrictions or limiting conditions regarding what is meant by "rights."

In this paper, I do not aim to analyze the development of MacIntyre's thought regarding rights from the time that he wrote *After Virtue* (in 1981) to the time that he expressed what appears to be his more moderate view (in 1990). My aim, rather, is to make use of MacIntyre's difficult grappling with the language of "rights" as a starting point for my own reflections on what sense we can make of the term, "rights," within an Aristotelian-Thomistic context. As MacIntyre has shown us, it is important to exercise some degree of caution—or even suspicion—regarding the language of rights insofar as such language can easily be misunderstood to imply that individuals may possess certain entitlement-conferring properties or powers (typically called "rights") entirely in isolation from other individuals, and outside the context of any community or common good. Thus along with MacIntyre, I accept the view that "rights" are inescapably relational: to "possess a right," on the Aristotelian-Thomistic account I wish to explicate, is to occupy a place within an order or ordering of justice, according to which two or more individuals are related to one another as equals in some relevant respect.

But while agreeing with MacIntyre on the relational or context-dependent character of what we mean by "rights," I also wish to affirm that some of our contemporary language or discourse about "rights" is not altogether misguided. More specifically, I wish to affirm that at least some of our contemporary discourse does, indeed, reflect the Aristotelian-Thomistic view that justice consists in a kind of equality or commensuration between two or more individuals; and that the "rights" which individuals possess are not merely individual possessions, but depend—in a fundamental way—on what we might call "equality of due treatment." In short, I wish to affirm that we can meaningfully employ some of our contemporary language

of "rights," even while denying (along with MacIntyre) that our language of "rights" refers to properties or powers that allegedly belong to individuals entirely apart from their relations to others or apart from their belonging to communities. On the Aristotelian-Thomistic account I wish to present, our language of rights must always be used in tandem with an understanding of justice, or equality of due treatment: if the proper equality or commensuration between individuals and their acts is observed, then we can justifiably say that (natural or positive) rights are respected; if the proper equality or commensuration is not observed, then we can justifiably say that (natural or positive) rights are violated.

II. Our Contemporary Language about "Rights," "Misfortunes," and "Injustices"

In contemporary discussions, the claim that a person (or, according to some, an animal) has a right is often taken to mean nothing more than that a person or animal ought to be treated in a certain way. Thus, when politicians and pundits argue that every American citizen has a "right to health care," they are taken to mean (and they often take themselves to mean) nothing more and nothing less than that every American citizen ought to be given health care. Similarly, when animal activists argue that animals have a "right to humane treatment," they are taken to mean (and they often take themselves to mean) nothing more and nothing less than that animals ought to be treated humanely. But for a critical-minded philosopher, this relatively straightforward equation of our language of "rights" and our language of "oughts" will simply not suffice. After all, I can believe with all due sincerity that books ought to be read and ought not to be burned, even though I do not hold that books have a right to be read or a right to be spared from the flames. Similarly, a person can believe that every American citizen ought to be given access to health care, or that animals ought to be treated humanely, even without believing that American citizens and animals, respectively, possess rights to these goods. If our language of "rights" does not simply mean the very same thing that is meant by our language of "oughts," then what precisely do we mean, when we make use of the language of rights?

In order to begin addressing this question, let us stipulate for the sake of convenience (after all, it is beyond the scope of this paper to provide complete justification for every relevant philosophical claim) that to be treated justly is to have one's right or rights respected; and to be treated unjustly is to have one's right or rights violated. Now let us ask: what do we mean, when we use the terms "injustice" and "misfortune" to refer to different kinds of happenings? Consider the following scenarios:

(A) While crossing an open meadow in the rain, I am struck and killed by lightning.

(B) While standing at an intersection, a stranger—without my prior knowledge or consent—suddenly pushes me, causing me to trip over the curb, fall to the ground, and fracture my femur.

Do the happenings described in (A) and (B) represent instances of injustice or misfortune? It is tempting to say that the happening described in (A) is a mere misfortune (a mere freak accident of nature), while the happening described in (B) is an injustice. But upon further reflection, it turns out that this immediately intuitive response is inadequate.

In scenario (A), it could be the case that the meadow which I am crossing is not an instance of *res nullius* (it is not a thing that belongs to nobody), but is in fact part of a large public park managed by a municipality that has been instructed repeatedly by state authorities to erect warning signs and a fence around the meadow, since (by virtue of its location and elevation) it is known to be an especially dangerous attractor of lightning strikes. Under those circumstances, my being struck and killed by lightning may turn out to be an instance of injustice, and not merely a misfortune or freak of nature. For in the scenario as it has thus been described in greater detail, at least one significant cause that contributes to my being struck and killed by lightning would be the municipality's negligent or intentional failure to erect a fence and warning signs, as required by the state authorities (for the sake of protecting individual citizens from risks about which they might otherwise be unaware).

In a similar vein, we can think of scenario (B) as illustrating an instance of a mere misfortune, rather than any kind of injustice. In scenario (B), it could be the case that the stranger who pushes me and causes my femur to be fractured was (1) insane and compelled to push me on account of his insanity (let us call this scenario B.1), or (2) sane but acting with the intention of moving me quickly out of the path of an oncoming car and thus saving my life (let us call this scenario B.2). In scenario B.1, the harm caused to me (in the form of my fractured femur) is not an unjust harm, since the stranger who pushed me was not acting as a free and responsible agent (his action may have been caused—beyond the scope of his free agency—by a neurological or chemical condition). Since the harm that befalls me in this case is not traceable to an agent that I might hold responsible, the fact that this harm has befallen me is not an injustice but a misfortune (akin to the kinds of harms that are traceable only to natural causes, whether these causes have to do with lightning strikes and earthquakes in the world outside the bodies of human beings, or neurological debilities or chemical imbalances within the bodies of human beings). In scenario B.2, the harm caused to me (in the form of my fractured femur) is not an unjust harm, since the stranger whose actions brought about this harm was acting with the intention of saving my life. The stranger may have believed that he could push me out of the path of the oncoming car, without knocking me down and injuring me; in that case, my falling and sustaining a fracture would have not only been unintended by him, but also unforeseen. Alternatively, the stranger may have realized that his pushing me away from the oncoming car also carried with it the substantial risk of knocking me down and causing some non-fatal harm to me. But even if the stranger foresaw the harm to be caused to me, the harm itself (my femur's being fractured) is something that fell outside the scope of his intention when he pushed me, and thus the harm that he caused would be justifiable under the circumstances.

Now the traditional "doctrine of double effect" is relevant here, and it offers a credible explanation of precisely *why* the stranger's action was justified; for according to the "doctrine of double effect," the stranger's act of pushing me down in order to save my life would be justified, even if he foresaw the non-fatal harm that he would cause me, since the causing of this non-fatal harm fell outside the scope of his intention, and the good at which he was aiming in the act of pushing me (namely, the good of preserving my life) was sufficiently weighty to justify the causing of the lesser, unforeseen harm. A full explanation of the relevance and defensibility of the "doctrine of double effect" in the present case is beyond the scope of this paper.[4] But the important point, for our purposes here, is that the harm caused to me on account of the stranger's act of pushing me to the ground may, under certain circumstances, be properly characterized not as an instance of injustice, but as a mere misfortune. The fact that the harm caused to me is a misfortune, and not an injustice, is grounded on the fact that the harm caused to me is either (a) not traceable to any voluntary act of a free and responsible agent (e.g., if the stranger did not and could not reasonably have foreseen the harm that would befall me as a result of his act of pushing me), or (b) traceable to the voluntary act of a free and responsible agent, but in a case where the agent's achievement of some greater, intended good (e.g., the saving of my life) was apprehended by the agent as inseparable from the causing of some other, lesser harm (e.g., the fracturing of my femur). In both of these cases, the harm would be said to be a misfortune rather than an injustice, insofar as the harm as such is something that (a) falls altogether outside the scope of what the agent does voluntarily, or (b) falls within the scope of what the agent does voluntarily but outside the scope of what the agent does intentionally, even though the harm (given the way that circumstances in the natural world present themselves) is bound up with (is not separable from) what the agent aims at intentionally.[5] In either case, the fact that harm befalls me is properly traceable not to the causal efficacy of any moral agent acting for the sake of some intended end, but rather to the natural causality of things and circumstances in the world (after all, the brute fact that a particular intended good happens to be inseparable, given the way the world is, from an unintended but foreseen harm, is a function of natural and not intelligent causality); and thus the harm caused to me under these circumstances (my fractured femur) is properly characterized as a misfortune rather than an injustice.[6]

What emerges from the two scenarios that we have been considering is the following lesson: the question of whether a particular scenario is to be properly understood in terms of a "misfortune" or an "injustice" (i.e., a violation of rights) depends not simply on the nature or character of the harm done to some individual person; it depends rather on whether or not the harm done is properly traceable to (or attributable to) the free and responsible agency of some other individual person or persons. The lesson, in other words, is that the question of whether or not an injustice has been done and a right has been violated, depends fundamentally on relations between two or more persons, and not merely on relations between a particular person and a particular harm done. This implies, furthermore, that our language of "rights" is language about that which is inescapably relational; it is about

relations between persons or moral agents, and not merely about relations between persons and things, or between persons and harms. Our contemporary language regarding the difference between misfortunes and injustices does, indeed, reflect this important lesson. In the final section of this paper, I wish to make a start at showing how this lesson (about the relational character of justice, and thus the relational character of what we mean by "rights") can be understood and accounted for, from an Aristotelian-Thomistic point of view.

III. Towards an Aristotelian-Thomistic Account of "Justice" and "Rights"

Following Aristotle, Aquinas holds that the virtue of justice directs the human being in his or her relations to others, and these others can be regarded (a) as individual others, or (b) as others in general, i.e., others as the whole community to which the human being belongs. When understood in this latter sense, justice can be regarded as lawfulness in general, in which case it is called "legal justice" or "general justice" (as distinct from "particular justice," which directs the human being in his or her relations to other individuals). Legal justice or general justice has the character of lawfulness in general, since it directs the human being to the common good of the entire community, and as a result may command any of the acts of the other virtues, since the good of any particular virtue can in principle be ordered to the common good of the whole community (*ST* 2-2, Q. 58, a. 5–7). Furthermore, Aquinas also holds that the proper aim or object of justice is "right" or "the right" (*ius*), which is a kind of equality or "something equal" in external things (*ST* 2-2, Q. 59, a. 2). For Aquinas, then, justice always involves the relation of an individual or individuals to some other or others (*ST* 2-2, Q. 58, a. 2), and we can talk meaningfully about "the right" only where there is some ordering or arrangement whereby the acts and/or works of separate individuals (or groups, which henceforth will be implied by the word "individuals") can be regarded as commensurate or equal with respect to one another in some respect (*ST* 2-2, Q. 57, a. 1–3; Q. 59, a. 2). Given the conceptual connections in Aquinas's thought between justice, lawfulness, and the right, it is no surprise that Aquinas's account of natural law has often been understood as implying an account of "natural rights" or "human rights."

It is worth emphasizing, however, that Aquinas himself never developed a theory of "rights" or "natural rights." He did sometimes talk about "the right" in ways that seem to imply that "rights" might belong to individuals. Thus, for example, we sometimes read in Aquinas about "the right of dominion" over things (*ST* 2-2, Q. 62, a. 1, ad. 2), "the right of possessing" things (*ST* 2-2, Q. 66, a. 5, ad. 2), "the right of rulership" over others (*ST* 2-2, Q. 69, a. 1, c.), and "the right of accepting" tithes (*ST* 2-2, Q. 87, a. 3, c.). Furthermore, Aquinas says that justice is fittingly defined as "the perpetual and constant will to render to each one his right" (*ST* 2-2, Q. 58, a. 1). But contrary to John Locke and others who think of rights as entitlements or powers that can be possessed by individuals considered in isolation from one another, Aquinas would hold that one can talk meaningfully about justice,

the right, or "rights," only where two or more individuals are related to one another within the context of some arrangement or ordering whereby their acts and/or works can be regarded as commensurate or equal to one another in some relevant respect and in accordance with some common measure.

Consider, for example, a regime which recognizes what people today would call the right to own private property. For Aquinas, a defensible explanation or justification of this right would not appeal to any "natural," "self-evident," or "pre-existing" entitlements possessed by individuals as such (e.g., the entitlement to have dominion over one's own body or over the products of one's labor), but rather to the ends being served by the arrangement which allows for the ownership of private property. Thus, following Aristotle, Aquinas argues that it is reasonable for human beings to possess external things as their own, since in a society where some kind of private ownership is recognized, there will be less shirking of responsibility, less confusion, and less bickering in the way that people exercise dominion over external things (*ST* 2-2, Q. 66, a. 2). On Aquinas's account, to enjoy the "right" to own private property in such a society would be to enjoy equal treatment in accordance with the rules (whatever they may be) that allow for the acquisition, possession, and alienation of external things by private individuals. Significantly, Aquinas argues that in cases where one human being is in danger of perishing out of urgent and extreme need, it is licit for him or her to steal from another who possesses a surplus of wealth. Aquinas goes on to observe that this kind of taking, strictly speaking, would not even qualify as an instance of stealing (*ST* 2-2. Q. 66, a. 7). It is tempting to think that Aquinas's point here is that, in regimes which allow for the ownership of private property, individuals have a right to private property which may be violated in certain instances, such as in cases where someone is in danger of perishing out of extreme need. But to express the matter in this way is to commit a category mistake. Aquinas's point is not that the "right" to own private property can be violated in certain instances. His point, rather, is that in any instance where one person possesses a surplus of wealth and another is in imminent danger of dying on account of needs that could be remedied by taking from such surplus, there is (according to the "natural law" itself) no rightful ordering—and hence no "right" to own the surplus wealth—in the first place.

For Aquinas, we cannot speak meaningfully about "the right" or about "rights" if individuals are not related to one another in some way that allows us to regard their acts and/or works as equal to one another in some relevant respect. We might say that, on Aquinas's account, what we mean by "the right" or "rights" is inescapably relational: to possess a "right" is to occupy a place within some arrangement or ordering whereby two or more individuals are treated as equals in some relevant respect. Rights are respected when the proper equality between individuals is observed; and rights are violated when the proper equality between individuals is not observed. Of course, treating individuals as equals in one respect (e.g., in accordance with the rules that allow them to acquire, possess, and alienate property) is perfectly compatible with treating them as unequal in other, unrelated respects (thus those who acquire the largest sums of wealth in accordance with the rules of property law are not automatically qualified to win the most beauty contests or singing competitions).

Aquinas himself does not speak about "natural rights" or "human rights." But following Aquinas, human beings may be said to possess "natural rights" or "human rights" insofar as they can be regarded as equal to one another simply on account of their shared status as human beings, or on account of their shared membership in the natural kind, "human being." Thus even if two or more human individuals shared no common status within the context of some conventional or agreed upon ("posited") arrangement (and thus even if they had no "positive" rights with respect to one another), they may nevertheless be said to have "natural rights" or "human rights" with respect to one another. Thus it would be a violation of right or rights if such individuals were not accorded the kind of treatment that is (equally) fitting for them, given the sort of goodness and dignity that they possess simply as human beings. Notice, however, that to say that a certain kind of goodness or dignity exists wherever any human being exists, is not the same as saying that "natural rights" or "human rights" exist wherever any human being exists. When an isolated human being starves to death on a desert island, there is genuine harm or evil (namely, the loss of the unique goodness that belongs to a human life). But in such an instance, one cannot say that there has been a violation of right or rights, since the loss of human life on the desert island has not been the result of any sort of unequal treatment involving one human being and another. On the other hand, if a human being starves to death because his neighbors do not share with him their surplus wealth, then one can talk meaningfully about a violation of rights, and even a violation of "natural rights" or "human rights" (for Aquinas, it is a dictate of the natural law itself that the superabundant wealth of some should be used for the purpose of aiding those who need it; *ST* 2-2, Q. 66, a. 7). In the case of the stingy neighbors, the violation of "natural rights" would consist not in the loss of life as such, but rather in the neighbors' culpable failure to accord to another human being the sort of treatment that they can and do accord to themselves and that is (equally) fitting for all human beings, given the sort of goodness and dignity that they possess simply as human beings.

For Aquinas, the question of whether a particular being is or is not an instance of a certain natural kind is not to be settled by asking whether or not that particular being possesses or does not possess certain supposedly "essential" properties that are normally perfective for beings of that kind. After all, there are many individual human beings (instances of the natural kind, "human being") that remain human beings, even though they lack certain properties that are normally perfective for human beings (e.g., the properties of being able to engage in conscious activities, or to reason). For Aquinas, the question of whether a particular being is or is not an instance of a certain natural kind is to be settled by asking whether it is a being for which it is "natural" for it to have certain properties. More precisely, the question is to be settled by asking whether it is a being whose having of certain properties is to be explained by reference to some *internal* principle of the being itself, and whose lacking of those properties—if it does lack them–is to be explained by reference to some *failure* in its nature or some *extrinsic* cause of the lack (a cause such as a brain hemorrhage). Notice here that the question of whether a particular being is or is not

an instance of a certain natural kind is not to be settled by attending to the individual being alone; for no amount of attending to an individual being alone can ever reveal which properties are essential, and which are inessential, to that being, given the kind of being it is.[7] Rather, the question of whether a particular being is or is not an instance of a certain natural kind is to be settled by relying on an account of what is natural to (what is expected for the most part of) the kind of being in question, even if particular instances of the being in question may lack the usual or expected properties on account of some interference with internal principles.

As a final note, it is worth emphasizing here that, on the Aristotelian-Thomistic account being presented, it remains the case that "natural rights" and "human rights" are inescapably relational. But it does not follow that respect for "natural rights" or "human rights" is reducible to respect for values or goods that are "merely relative" or "merely convention-based." While "rights" are inescapably relational (insofar as the very notion of rights pertains to "equal treatment" of two or more individuals in some relevant respect), it remains the case that the very foundation of "natural rights" or "human rights" (namely, membership in a community defined by a natural kind) is not "merely relative" or "merely convention-based." The crucial point might be illustrated through an analogy drawn from the physical sciences: the notion of "natural rights" stands to the notion of "human nature" as the notion of "weight" stands to the notion of "mass." According to the modern scientific understanding, a body does not have weight if there is no other body present to exert the gravitational force of attraction upon it; but while a body has weight only insofar as it stands in relation to some other body, a body is capable of having such weight only because it is a body which by its very nature has mass, and would continue to have mass even if it did not stand in relation to any other body. By the same token, a human being does not possess "natural rights" if his or her acts or works cannot be regarded as adjustable or commensurable to the acts or works of other human beings; but while a human being has "natural rights" only insofar as he or she stands in some relevant relation to one or more other human beings, a human being is capable of having such natural rights only because he or she by nature belongs to a certain natural (and not merely posited or socially-constructed) class of things, and therefore possesses what we call "human nature"; and furthermore, the human being would continue to possess this human nature (and would continue to possess all the value or dignity that properly belongs to beings of this nature), even if he or she did not stand in relation to any other human beings.

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Notes

1. See Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame, Ind.: University of Notre Dame Press, 1981), 64–67.

2. MacIntyre, *After Virtue*, 67.

3. Alasdair MacIntyre, "The Return to Virtue Ethics," in *The Twentieth Anniversary of Vatican II: A Look Back and A Look Ahead: Proceedings of the Ninth Bishops' Conference*, ed. Russell E. Smith (Braintree, Mass.: The Pope John Center, 1990), 247–248.

4. For more on the doctrine of double effect, see G. E. M. Anscombe, "Action, Intention, and 'Double Effect,' in *Proceedings of the American Catholic Philosophical Association* (Washington, D.C.: American Catholic Philosophical Association, 1982), 12–25; and T. A. Cavanaugh, *Double Effect Reasoning: Doing Good and Avoiding Evil* (Oxford: The Clarendon Press, 2006). For Aquinas's most famous articulation of the view that has come to be known as the "doctrine of double effect," see Thomas Aquinas, *Summa Theologica*, 2-2, Q. 64, a. 7. All subsequent references to Aquinas's *Summa Theologica* will be indicated parenthetically in the body of the text itself, using *ST* as the abbreviation for *Summa Theologica*.

5. Here, I am relying on the Aristotelian-Thomistic account of the difference between the voluntary and the intended (acts which are intended or intentional form a subset of those that are voluntary). It is beyond the scope of this paper to provide a full—or even adequate—account of this distinction. But what I mean by this distinction is the following: an agent voluntarily brings about some state of affairs, X, when the agent acts with knowledge and some degree of control over the coming to be of X; an agent intentionally brings about some state of affairs, X, when the agent not only acts voluntarily in bringing about X but also acts out of the desire to bring about X, insofar as X is deemed by the agent as being "good" ("good" either as an end in itself, or "good" as a means to some further end that the agent desires).

6. There is, of course, another way in which one can talk about moral agency and thus culpability, even in the absence of intention or voluntariness. That is, one can talk about moral culpability in cases of *negligence*: cases in which an agent ought to have known or ought to have acted in a certain way, but did not know or did not act in a certain way (or did not act at all). A fully satisfying account of negligence is beyond the scope the present paper; here I simply wish to say that the possibility of negligence is fully compatible with the account being articulated in this paper. For Aquinas on the possibility of negligence, see *ST* 1-2, Q. 6, a. 3, and Q. 71, a. 5.

7. This is another way of making the point—made famous in the twentieth century by Ludwig Wittgenstein—that there is no such thing as "ostensive definition," or definition that is settled simply by means of pointing to, or attending to, a particular, individual thing. For definitions always have the character of being universal, or "of a kind"; there is no such thing as the *definition* of a singular or particular entity as such.