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Political Justice and Natural Law
Some Preliminary Thoughts on Aristotle's *Nicomachean Ethics*, Book V [*]

ABSTRACT

Aristotle's fifth book of the *Nicomachean Ethics* offers Aristotle's most complete treatment of justice. Besides being an invaluable source for understanding Aristotle's virtue ethics, this account of justice is believed to have considerable bearing on Aristotle's politics, especially his classification of constitutions, and his potential contribution to a doctrine of natural law. In this paper, I intend to tackle the problematic interpretation of political justice, and in doing so, I wish to engage both with Aristotle's original text and its different interpretative traditions in proposing a plausible method of assessment. The principal aim of this study is, thus, to sketch out a tenable procedure for interpreting Aristotle's idea of political justice and accommodating his potential contribution to the doctrine of natural law.

KEYWORDS: Aristotle, Nicomachean Ethics, justice, natural law

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Introduction

This paper endeavours to offer some preliminary insights to the interpretation of the fifth book of Aristotle's *Nicomachean Ethics* which constitutes Aristotle's fullest treatment of the subject of justice, both as a disposition or interpersonal relation (τό δίκαιον) and as a particular virtue of character (δικαιοσύνη). Aristotle considers several issues, attending on the idea of justice, such as how may a just action be characterised and whether justice, like the other virtues, could be understood in terms of proportions, namely is the virtuous a mean between two extremes? Are there different sorts of justice? And, of course, the problem of agency, that is whether justice and injustice are voluntary, which prepares for the crucial discussion on whether one can be unjust to oneself? Though, these questions may, at first, appear to be just accidentally related to the study of jurisprudence, central to Aristotle's discussion is a query of tremendous significance: is the artificial order of the polis entirely made of arbitrarily posited conventions, or is there a natural source of justice to the legal order as well? In other words, is it legitimate to speak of natural justice, and if so, how does it relate to law?

This latter problem may also be referred to as the controversy between the natural law position and legal positivism, but that is a gross oversimplification of the matter at hand. According to Hans Kelsen, the doctrine of natural law "ist eine Metaphysik des Rechts" which he explains with reference to Plato's idealism; just like the Platonic ideas are immaterial forms of the material world, the natural law doctrine, a form of higher law (ein höheres Recht), is to inform the positive law in terms of legal justification or validity.[1] Nevertheless, there are prominent exponents of the natural law doctrine who do not subscribe to any metaphysical justification for the legal phenomenon. As such, John Finnis, for instance, claims that the knowledge of natural law precedes the knowledge of any positive norms, and that is why strictly speaking natural law could not have a history because its principles are eternally and intrinsically bound to practical reasonableness.[2] And, as a matter of fact, Aristotle himself described the legal order a product of the legislative science, which he understood to be a kind of φρόνησις.[3] Hence, if Aristotle was, indeed, a natural law thinker, he would imagine natural law to be operating within the contingent domain of πρᾶξις.

This latter issue, that is Aristotle's potential contribution to the natural law tradition, cannot simply be passed by, since as early as Aquinas' commentary on the *Nicomachean Ethics*, it has been forcefully vindicated that Aristotle's distinction of natural and conventional justice happens to coincide with the Roman law categories of *ius naturale* and *ius postivium*.[4] But Aquinas arrives to this conclusion by making two interpretive leaps, unaccounted for by the text itself, namely equating natural justice with natural right (*quod ius dicitur quasi iustum*) and ascribing its operation to human reason, which has made room for a *ius naturale* reading of the *Ethics*, founded on natural law principles, such as the natural law principle that prisoners ought to be ransomed, the price of which should be determined by positive law.[5]

Though, from a methodological point of view, Aquinas' commentary has some serious flaws to it, the reading of the *Nicomachean Ethics*' chapter on political justice (V. 7) still centres around the issue of natural law and positive law. While several commentators still endorse Aquinas' rendering, either on the basis of a shared understanding of natural law between the two,[6] or endeavouring to highlight their doctrinal discrepancies, yet within the confines of an intrinsically Thomistic framework,[7] others argue

[1] Hans Kelsen: *Naturrechtslehre und Rechtspositivismus*. p. 316. In Politische Vierteljahresschrift, Vol. 3, No. 4, 1962. pp. 316–327.
[2] John Finnis: *Natural Law and Natural Rights*. 2nd edition. Oxford University Press, Oxford, 2011. pp 23–29. John Finnis: *Natural Law Theory: Its Past and its Present*. p. 85. In The American Journal of Jurisprudence, Vol. 57, 2012. pp. 81–101.
[3] Aristoteles: *Ethica Nicomachea.* 1141b24–26. p. 121. Recognovit brevique adnotatione critica instruxit Ingram Bywater. Clarendon, Oxford, 1908.
[4] Thomas de Aquino: *Sententia libri Ethicorum*. Liber V, lect. 12.
[5] Ibid.
[6] E.g.: Tony Burns: *Aristotle and Natural Law*. Continuum, London, 2011. pp. 11, 52–58, 174. George Duke: *Aristotle and Natural Law*. pp. 22–23. In The Review of Politics, Vol. 82, No. 1, 2020. pp. 1–23.
[7] E.g.: Harry V. Jaffa: *Thomism and Aristotelianism. A Study of the Commentary by Thomas Aquinas on the Nicomachean Ethics*. The University of Chicago Press, Chicago, 1952. pp. 182–188. Ross J. Corbett: *The Question of Natural Law in Aristotle*. pp. 231–233. In History of Political Thought, Vol. 30, No. 2, 2009. pp. 229–250.

for the impossibility of understanding Aristotle in terms of the natural law positive law dualism.[8] But some even goes as far as to regard Aristotle the founder of the natural law doctrine, or some version of it,[9] and there is Kelsen, of course, who ascribes Aristotle's theory to legal positivism.[10]

The inquiry into Aristotle's idea of political justice, a part of which is said to be natural,[11] begs the question, then, of what is natural law? Now, there cannot be a ready answer to this query, but given the scholarship on Aristotle's idea of justice is still largely determined by Aquinas' *ius naturale* interpretation, and due to the apparent plausibility of Kelsen's false conceptual assumptions, one cannot attempt to tackle Aristotle's idea of justice without some *a priori* criteria of natural law. It is no wonder therefore that the bulk of Aristotle's modern commentators labour, to various extents, to reconstruct his likely sense of law (νόμος) and nature (φύσις), and to propose certain criteria for natural law with which Aristotle may reasonably be associated.[12]

In this paper, I endorse this line of reasoning, and so I propose to analyse Aristotle's idea of political justice after the following fashion. First, I intend to consider those questions that are related to Aristotle's writing project of the fifth book of his *Nicomachean Ethics*. What are the main conceptual units of this book, and what are the stumbling blocks of its interpretation? Next, I take a look at the various kinds of justice and try to accommodate political justice within Aristotle's general framework. And finally, I am going to tackle the problem of political justice with reference to the essence of conventional and natural justice. In doing so, I wish to engage both with Aristotle's original text and its different interpretative traditions in proposing a plausible method of assessment. The principal aim of this study is, thus, to sketch out a tenable procedure for interpreting Aristotle's idea of political justice and accommodating his potential contribution to the doctrine of natural law.

I. Some general remarks on the fifth book of the *Nicomachean Ethics*

The fifth book of the *Nicomachean Ethics* is traditionally divided into eleven chapters. The first chapter introduces the problem of justice, and it raises three questions, namely: (1) what sort of actions is justice concerned with; (2) what sort of mean is justice as a virtue; and (3) what is the just a mean of, or what are its extremes?[13] These questions are, then, dealt with through the subsequent inquiry from chapter two to five which analyses 'the various species of justice' being 'united by the goal of showing how justice is a mean'.[14] Chapter six and seven somewhat abruptly start a new discussion about political justice, which has made those passages subject to editorial emendation or reorganisation.[15] Finally from

[8] Donald N. Schroeder: *Aristotle on Law*. pp. 25–30. In Polis: The Journal for Ancient Greek and Roman Political Thought, Vol. 4, No. 1, 1981. pp. 17–31. Jesús Vega: Aristotle's Concept of Law: Beyond Positivism and Natural Law. p. 28. In Journal of Ancient Philosophy, Vol. 4, No. 2, 2010. pp. 1–31. Francisco L. Lisi: *Aristotle on Natural Right*. p. 148. In Manuel Knoll – Stephen Synder – Nurdane Şimşek (eds.): *New Perspectives on Distributive Justice*. De Gruyter, Berlin, 2019. pp. 133–150.

[9] Max Salomon Shellens: *Aristotle on Natural Law*. p. 72. Natural Law Forum, paper no. 40, 1959. pp. 72–100. Leo Strauss: *Natural Law*. pp. 81–82. In David L. Sills (ed.): *International Encyclopedia of the Social Sciences* Vol. 11. Collier-Macmillan Publishers, New York, 1968. pp. 80–85. Fred D. Miller Jr.: *Aristotle on Natural Law and Justice*. p. 306. In. David Keyt – Fred D. Miller Jr. (eds.): *A Companion to Aristotle's Politics*. Blackwell, London, 1991. pp. 279–306. Burns: op. cit. pp. 173–174. Duke: op. cit. pp. 13–23.

[10] Hans Kelsen: *The Foundation of the Theory of Natural Law*. pp. 127–131. In Hans Kelsen (ed.): *Essays in Legal and Moral Philosophy*. Selected and Introduced by O. Weinberger. Translated by P. Heath. D. Reidel Publishing, Boston, 1973. pp. 114–153.

[11] Aristoteles: *EN* 1134b18–21. Bywater: op. cit. p. 103.

[12] E.g.: Schroeder: op. cit. pp. 17–23; Bernard Yack: *Natural Right and Aristotle's Understanding of Justice*. p. 218. In Political Theory, Vol. 18, No. 2, 1990. pp. 216–237. Anthony A. Long: *Law and Nature in Greek Thought*. pp. 412–421. In Michael Gagarin – David Cohen (eds.): *The Cambridge Companion to Ancient Greek Law*. Cambridge University Press, Cambridge, 2005. pp. 412–430. Thornton C. Lockwood Jr.: *Physis and Nomos in Aristotle's Ethics*. pp. 24–32. In The Society for Ancient Greek Philosophy Newsletter, 2005. pp. 23–35. Vega: op. cit. pp. 6–11; Burns: op. cit. pp. 1–48; Lisi: op. cit. pp. 133–140.

[13] Aristoteles: *EN* 1129a3–5. Bywater: op. cit. p. 88.

[14] Thornton C. Lockwood Jr.: *Ethical Justice and Political Justice*. p. 43. In Phronesis, Vol. 51, No. 1, 2006. pp. 29–48.

[15] Ibid. p. 31.

chapter eight to eleven, Aristotle is occupied with the problem of ethical agency, injustice and unjust actions, and the criticism of Plato's theory, that is whether it is possible to be unjust to oneself?

There are two current scholarly divisions of the fifth book that seem to make sense to me. The first was put forth by Thornton Lockwood who disconnects V. 6–7 from the discussion of V. 2–5 and claims that V. 6 is the introduction to the problem of ethical agency, set out in V. 8.[16] In his opinion, Aristotle's treatment of the various species of justice is related to the initial question of justice being a mean (μεσότης), and 'the analysis of political justice in *EN* V.6 initiates a new inquiry'.[17] He argues that virtuous actions presuppose deliberation (προαίρεσις) which, in turn, necessitates full ethical agency, a character state that allows virtuous action. Since slaves, children, and women were not thought to be fully ethical agents, the discussion of agency from V. 8 should be preceded by a description of its scope, which is political justice.[18]

The other arrangement is proposed by Ronald Polansky who also divides the fifth book into two parts, only that he sees V. 1–5 are providing the account of justice of character, whereas the remainder of the book is the defence of this account.[19] He rests his claim on Aristotle's stated intent of inquiry, as the questions introduced at the beginning of V. 1 are dully dealt with in the first five chapters; hence, the issues raised in the subsequent part, 'seemingly disconnected, are linked because a problematic answer to any of them threatens the entire account of justice.'[20] As such, the principles of justice may have some bearing on non-citizens as well which may lead to the observation that at least a part of it is natural. 'If some of the politically just is natural, this supports the extension to all human relationships inasmuch as the just in other relationships approximates that of citizens and gives justice of character strong standing.'[21]

Of these two accounts, I favour Lockwood's proposition for its strong textual basin. I agree that the beginning of chapter six does constitute an introduction to the problem of agency,[22] and Lockwood's interpretation of τὸ ἁπλῶς δίκαιον and τι δίκαιον are also rather convincing. Whether the two chapters on political justice are continuous with the discussion on the special varieties of justice or not is largely dependent on how ἁπλῶς δίκαιον and τι δίκαιον are translated. Lockwood claims that the particles function adverbially and epexegetically in the sentence δεῖ δὲ μὴ λανθάνειν ὅτι τὸ ζητούμενόν ἐστι **καὶ** τὸ ἁπλῶς δίκαιον **καὶ** τὸ πολιτικὸν δίκαιον (let it not escape notice that we seek also unqualified justice, that is, political justice),[23] which would clearly indicate the passages' discontinuity with V. 2–5. Since most recent editions adopt this translation,[24] I think it can be accepted for the time being.

This conclusion is amplified, then, by the translation of τι δίκαιον as a 'sort of justice', implying that those relations in which the agents are lacking full ethical agency do not have justice to themselves, but only something which resembles justice.[25] This could have political implications and could perhaps be extrapolated to Aristotle's distinction of natural and unnatural constitutions, but that is beyond the scope of the *Nicomachean Ethics*.[26]

II. The *Nicomachean Ethics'* definition and division of justice

[16] Ibid. pp. 29–48.
[17] Ibid. p. 43.
[18] Ibid. pp. 35–36.
[19] Ronald Polansky: *Giving Justice Its Due*. p. 152. In Ronald Polansky (ed.): *The Cambridge Companion to Aristotle's* Nicomachean Ethics. Cambridge University Press, Cambridge, 2014. pp. 151–179.
[20] Ibid. p. 168.
[21] Ibid. p. 170.
[22] Aristoteles: *EN* 1134a17–23. Bywater: op. cit. p. 102. Lockwood (2006): op. cit. p. 37.
[23] Aristoteles: *EN* 1134a24–26. Bywater: op. cit. p. 102. Lockwood's translation. Lockwood (2006): op. cit. 39. Emphases mine.
[24] E.g.: Aristotle: *Nicomachean Ethics*. Third edition. Translated with Introduction, Notes, and Glossary by Terence Irwin. Hackett Publishing, Indianapolis, 2019. p. 91. Aristotle: *Nicomachean Ethics*. Translated with an Interpretive Essay, Notes, and Glossary by Robert C. Bartlett and Susan D. Collins. The University of Chicago Press, Chicago, 2011. p. 103.
[25] Lockwood (2006): op. cit. p. 40. Marco Zingano: *Natural, ethical, and political justice*. pp. 204–207. In Marguerite Deslauriers – Pierre Destrée (eds.): *The Cambridge Companion to Aristotle's Politics*. Cambridge University Press, Cambridge, 2013. pp. 199–222.
[26] Gianfrancesco Zanetti: *Problematic Aspects of Aristotle's Philosophy of Law*. pp. 56–58. In ARSP: Archiv für Rechts- und Sozialphilosophie, Vol. 81, No. 1, 1995. pp. 47–64.

Aristotle maintains that according to the common opinion, justice is a disposition (ἕξις), a virtue of character, that makes those who partake in justice the doers of just things (πρακτικοὶ τῶν δικαίων), and it causes them to indulge in doing and wishing for justice (δικαιοπραγοῦσι καὶ βούλονται τὰ δίκαια).[27] Unlike the sciences and capacities, characteristics do not admit opposites; hence, if the character state of justice is unknown, it could be defined through its opposite, injustice.[28] Obviously, there are two kinds of injustice, the unlawful (παράνομος) on the one hand, and the overreacher and unequal (ὁ πλεονέκτης καὶ ἄνισος) on the other hand. From this follows, then, that there should be two apposite states of justice, namely the lawful (νόμιμος) and the equal (ἴσος).[29] Of these, the lawful covers justice in the broader sense, since most of the things commanded by the laws are prescribed on the basis of the whole of virtue. Particular justice is characterised by equality, as it is opposed to unequal gain, arising from the want of honour, money, etc. That is why particular justice occurs either in the distribution of these things, or in the rectification of unequal gain.[30]

Though, *prima facie* it looks as if Aristotle had proposed two kinds of particular justice, 'there should in fact be merely one virtue, particular justice of character, which displays itself especially in distribution or rectification.'[31] For Aristotle's distinction lays between the whole of justice and particular justice, but the latter is referred to as in the singular.[32] So, instead of distributive and rectificatory justice, one ought to 'distinguish two spheres of *just action* in which the single virtue justice comes into play: justice in character should enter into both distributive and rectificatory actions.'[33] Thus, political justice, the subject-matter of our inquiry is wholly unrelated to the discussion on particular justice, and so, it should be interpreted irrespective of V. 2–5.

III. The political justice of the *Nicomachean Ethics* V. 6–7

Political justice is unqualified justice (ἁπλῶς δίκαιον), and so Aristotle seems to have returned to his original inquiry about justice according to the whole of virtue. Now, the precondition for political justice is a proper delineation of agency; hence, political justice belongs only to those who are by their very nature suited for law (ἐν οἷς ἐπεφύκει εἶναι νόμος) and whose relations are governed by it.[34] What is more, there is no justice proper, only a sort of justice (τι δίκαιον) in non-political relations, from which follows that there is no rule of justice independent of law (νόμος). And this consideration must be a crucial criterion in assessing Aristotle's subsequent analysis.

Unfortunately, Aristotle's rather brief account of political justice is very controversial and open to contradictory interpretations, for which reason it is necessary, I think, to identify those issues on which a proper rendering of Aristotle's sense may hinge. Given the importance of the passage, I am quoting Aristotle in full.

One part of the politically just is natural, and the other part legal. The natural has the same validity everywhere / alike, not by its seeming so or not. The legal originally makes no difference <whether it is done> one way or another, but makes a difference whenever people have laid down the rule – that a mina is the price of a ransom, for instance, or that a goat rather than two sheep should be sacrificed. The legal also includes laws passed for particular cases (for instance, that sacrifices should be offered to Brasidas)1 and enactments by decree. Now some people think everything just is merely / legal. For the natural is unchangeable and equally valid everywhere – fire, for instance, burns both here and in Persia – whereas they see that the just changes <from city to city>. This is not so, though in a way it is so. With us, though presumably not at all with the gods, there is such a thing / as the natural, but still all is changeable. Nonetheless one sort of things is natural and one sort is not. Then what sort of thing, among those that admit of being otherwise, is natural, and what sort is not natural, but legal

[27] Aristoteles: *EN* 1129a6–9. Bywater: op. cit. pp. 88–89.
[28] Aristoteles: *EN* 1129a11–16. Bywater: op. cit. p. 89.
[29] Aristoteles: *EN* 1129a31–b1. Bywater: op. cit. pp. 89–90.
[30] Aristoteles: *EN* 1130b6–1131a1. Bywater: op. cit. pp. 92–93.
[31] Polansky: op. cit. p. 158.
[32] Ibid.
[33] Ibid. op. cit. pp. 158–159.
[34] Aristoteles: *EN* 1134a30; 1134b13–15. Bywater: op. cit. pp. 102, 103.

and conventional, if both natural and legal are changeable? It is clear in other cases also, and the same distinction will apply; for the right hand is naturally superior, even / though it is possible for everyone to become ambidextrous. The sorts of things that are just by convention and expediency / are like measures. For measures for wine and for corn are not of equal size everywhere, but in wholesale markets they are bigger, and in retail smaller. Similarly, the things that are just by human <enactment> and not by nature differ / from place to place, since political systems also differ. Still, only one system is by nature the best everywhere. Each <type of> just and lawful <action> is related as a universal to the corresponding particulars; for the <particular> actions that are done are many, but each <type> is one, since it is universal. An act of injustice is different from the unjust, and an act of justice from the just. For the unjust is unjust / by nature or enactment; when this has been done, it is an act of injustice, but before it is done it is only unjust. The same applies to an act of justice <in contrast to the just>. Here, however, the general <type of action contrary to an act of injustice> is more usually called a just act, and what is called an act of justice is the <specific type of just act> that rectifies an act of injustice. Later we must examine each of these actions, to see what sorts of species, and how many, they have, and what they / are concerned with.[35]

Obviously, the first such interpretive issue concerns the relationship between natural and conventional justice (τὸ μὲν φυσικόν ἐστι τὸ δὲ νομικόν).[36] But actually, this question ought to be preceded by another inquiry, namely what is, in fact, the subject of Aristotle's analysis? All commentators take it for granted that Aristotle is deliberating on actions, but in the light of his latter distinction of justice (τό δίκαιον) and the doing of justice (δικαίωμα or δικαιοπράγημα),[37] which is a reaffirmation of his introduction to the problem of agency, this is rather far from being that evident. Another issue is the apparent contradiction between the claims of variability and invariability for the domain of natural justice.[38] The precise role of the example of right handedness. And finally, there is Aristotle's controversial insistence on the best constitution by nature (ἀλλὰ μία μόνον πανταχοῦ κατὰ φύσιν ἡ ἀρίστη).[39]

Let us start with the preliminary question of Aristotle's subject-matter. Aristotle is expounding the meaning of political justice (πολιτικὸν δίκαιον), a part of which is natural, another conventional. The neutral τό μέν and τό δέ refer to δίκαιον, implying that political justice has a part which is natural justice, and another which is conventional justice. The subject of his inquiry is, thus, justice as a disposition or interpersonal relation (τό δίκαιον). In this respect, Aristotle is thoroughly consistent. He only starts discussing justice and injustice in action when he introduces the problem of agency, at the very end of the chapter.

Now, throughout the fifth book of the *Nicomachean Ethics*, τό δίκαιον should be rendered as a relationship or disposition between distinct persons and with respect to some value judgment, based on which there is room for distribution or rectification, that is, based on which there exists a relationship governed by law. For justice is the outcome of a just action, something which should be aimed at by anyone possessing the virtue of justice (in action).[40] As such, it is fundamentally wrong to see Aristotle as deliberating on justice in action (δικαίωμα or δικαιοπράγημα) and to view at his examples of ransom and sacrifice in terms of normative ethics.

As early as Aquinas' commentary on Aristotle's *Nicomachean Ethics*, Aristotle is being associated with a theory of natural law operating on the basis of unchanging and rationally discernible moral precepts. Aquinas argues that even in practical matters there are some indemonstrable principles naturally known to man (*in operativis sunt quaedam principia naturaliter cognita quasi indemonstrabilia principia et propinqua his*) which applies to legal justice as well: legal justice either originates from natural justice as a conclusion from a principle (*sicut conclusio ex principiis*), or by way of a closer determination (*per modum determinationis*). And Aquinas takes the opportunity to support his reading through demonstrating that Aristotle's examples of ransom and sacrifice contain an element of invariable truth, e.g.: prisoners ought to be ransomed or that divine honours may be given, which are

[35] Aristoteles: *EN* 1134b18–1135a15. Bywater: op. cit. pp. 103–104. Irwin's translation. Irwin: op. cit. pp. 92–93.
[36] Aristoteles: *EN* 1134b18–19. Bywater: op. cit. p. 103.
[37] Aristoteles: *EN* 1135a8–13. Bywater: op. cit. p. 104.
[38] Aristoteles: *EN* 1134b19–20; 1134b29–33. Bywater: op. cit. p. 103.
[39] Aristoteles: *EN* 1135a5. Bywater: op. cit. p. 104.
[40] E.g.: Aristoteles: *EN* 1129a7–9; 1129a33–1129b1. Bywater: op. cit. pp. 88–90.

commixed with variable, positive rules that determine the particulars of the just action.[41] But Aristotle's ethics revolves around justice as a virtue without much concern as to moral precepts.[42]

This fallacy, then, has dire consequences to the second issue, the translation of the μέν and δέ particles. Since the Greek text allows two plausible translations, namely that the natural and conventional parts of political justice are either separated from one another, or they ought to be discernible, yet without essential opposition, the text could be rendered to imply both that there are two distinct sources for law, or that there are two distinct domains which are nonetheless united in political justice. Apart from a minority view, represented by Donald Schroeder, Bernard Yack, Ross Corbet, and Jesús Vega, Aristotle's modern commentators tend to adopt some version of the latter option which is often referred to as the so-called horizontal interpretation.

According to Tony Burns, Aristotle's partition of political justice 'might be interpreted in two quite different ways' which he refers to as the 'vertical' and the 'horizontal' divisions.[43] In line with the former position, the rules of political justice ought to be divided into 'those laws which are entirely natural in so far as their substantive content is concerned, on the one hand, and those laws whose content is entirely legal or conventional on the other.'[44] Now, this is clearly untenable, for which reason Burns sides with the latter possibility in which 'each and every individual principle of political justice (or civil law) within a system of political justice is thought of as having at one and the same time, both a part which is natural and a part which is legal or conventional.'[45] It is some version of this interpretation which is adopted by the bulk of Aristotle's commentators, such as Fred Miller,[46] Jean Roberts,[47] Gianfrancesco Zanetti,[48] Marco Zingano,[49] Francisco Lisi,[50] George Duke,[51] Thornton Lockwood,[52] and Ronald Polansky.[53] They all argue for some more or less fixed and unchanging principles of natural justice which could inform the legislator with a view to the natural ends of the polis, or even to provide a normative criterion for the assessment of legislative decisions.[54]

There is, however, an obvious problem to this interpretation, namely it can hardly account for Aristotle's paradoxical statement concerning the variability and invariability of natural justice. When the distinction itself is introduced, Aristotle seems to have separated natural justice from conventional precisely by virtue of its fixed and eternal nature (φυσικὸν μὲν τὸ πανταχοῦ τὴν αὐτὴν ἔχον δύναμιν, καὶ οὐ τῷ δοκεῖν ἢ μή).[55] Nevertheless, he was also apt to point out that all rules of justice are equally variable, the rules of natural justice being included (εἴπερ ἄμφω κινητὰ ὁμοίως, δῆλον).[56] In order to save his reading, Burns distorts Aristotle's sentence and claims that 'natural justice might also be said to be *un*changeable, although again only in a sense, and not in any unqualified way.'[57] This means that though the principles are unchangeable, their implementation to civil law may be subject to variance, and so, they are, after all, changeable in a sense.[58]

Since Burn's solution is in open disregard of Aristotle's text, I cannot find any merit in his interpretation. Neither do Aristotle's more cautious readers who tend to elaborate on the cultural

[41] Thomas de Aquino: *Sententia libri Ethicorum*. Liber V, lect. 12.
[42] Yack: op. cit. p. 233.
[43] Burns: op. cit. pp. 48–49.
[44] Ibid. p. 49.
[45] Ibid.
[46] Fred D. Miller Jr.: *Aristotle's Philosophy of Law*. p. 98. In Fred D. Miller Jr. – Carrie-Ann Biondi (eds.): *A Treatise of Legal Philosophy and General Jurisprudence. Volume 6: A History of the Philosophy of Law from the Ancient Greeks to the Scholastics*. Springer, New York, 2015. pp. 79–110.
[47] Jean Roberts: *Justice and the polis*. p. 349. In Christopher Rowe – Malcolm Schofield (eds.): *The Cambridge History of Greek and Roman Political Thought*. Cambridge University Press, Cambridge, 2005. pp. 344–365.
[48] Zanetti: op. cit. pp. 50–51.
[49] Zingano: op. cit. p. 214.
[50] Lisi: op. cit. p. 143.
[51] Duke: op. cit. pp. 7–8.
[52] Lockwood (2005): op. cit. pp. 34–35.
[53] Polansky: op. cit. pp. 170–171.
[54] E.g.: Miller (1991): op. cit. p. 296; Zanetti: op. cit. p. 54; Duke: op. cit. pp. 2–3.
[55] Aristoteles: *EN* 1134b19–20. Bywater: op. cit. p. 103.
[56] Aristoteles: *EN* 1134b32–33. Bywater: op. cit. p. 103.
[57] Burns: op. cit. p. 59.
[58] Ibid. p. 57.

subjectivity of social norms and the variety of constitutions[59] or on the ontological and epistemologically adjusted sense of nature[60] in offering their solutions to Aristotle's paradox.

Quite close to this majority view is Bernard Yack's idea who emphasises the 'intrinsic merits of particular actions' and proposes a somewhat dialectical approach in finding 'those judgements that are correct and correspond somehow to the nature of things.'[61] His response to the query is, however, far from a metaphysical misconstruction of Aristotle; rather, it is a more or less cogent attempt to rationalise Aristotle in terms of the 'manner' of individual actions.[62] A less coherent attempt of this sort recurs in Ross Corbett's analysis who, on the other hand, argues for the intrinsic moral qualities of certain actions which position is,[63] I believe, inconsistent with the methodological premises of Aristotle's ethics.

Finally, Jesús Vega utterly denies the possibility of understanding Aristotle's account as a reference to principles of any kind.[64] He challenges Aquinas' reading and labours to show the artificial nature of Aristotle's sense of law. In his opinion, natural justice is a sort of ante-political moral order which informs the positive rules, still they are '*normatively* relevant to law only when *incorporated* by law'.[65] Nevertheless, he concludes that natural justice 'is then about the universal *in* the law', which he equals with 'the basic axioms of a true philosophy of law'.[66] In effect, this conclusion is shared by Donald Schroeder as well, who nonetheless somewhat evades the question, as it is only accidentally related to his inquiry. He maintains, however, that in Aristotle's system no law can exist by nature, and that natural justice is to highlight the 'moral functions' of law.[67]

I think, there are elements of truth in the latter, minority views, yet they cannot provide any plausible answer to the initial query. But such an answer is, I believe, readily at hand in Aristotle's discussion.

Given Aristotle's statement is explicating the opposition between natural and conventional justice, the one being invariable and existing irrespective of our understanding of it, the other being conventional and posited, the Greek text should be rendered as separative, that is the domains of natural and conventional justice are mutually exclusive. Yet, contrary to the thesis of a vertical division, it does not imply that there exists any hierarchy between these two. It does follow, however, that there are two distinct sources for law. Political justice is intrinsically associated with law; hence, both of its parts cannot but be linked to legal formulation. Still, the source of authority may be mere convention, or nature itself. Aristotle is speaking of φύσει δίκαιον in which the instrumental-dative denotes the cause of association.[68] That is to say that the rules belonging to natural justice have their source of origin in nature. And Aristotle does explain his meaning when he points out that justice is of two sorts, the lawful on the one hand, and the equal on the other hand.[69] It follows, then, that the domain of φύσει δίκαιον is characterised by equality, a proportion which does not change and does not depend on our understanding. Nevertheless, equality is not unqualified but being dependent on judgements of worth which results in the establishment of different constitutions with different criteria of equality.[70] And so, it is, in some way, subject to variance.

But there are two additional questions that may challenge my reading, namely the argumentative position of right handedness and Aristotle's reference to the best constitution.

The problem of right handedness is treated in elaborate details by Fred Miller who proposes a theory of normative nature, encompassing that which is normal or regular in the natural world.[71] Such a

[59] Roberts: op. cit. pp. 352–353, 360–361; Zanetti: op. cit. pp. 52–54; Lisi: op. cit. pp. 147–148; Polansky: op. cit. pp. 171–172.
[60] Miller (1991): op. cit. pp. 289–298; Lockwood (2005): op. cit. pp. 34–35.
[61] Yack: op. cit. p. 216.
[62] Ibid. p. 233.
[63] Corbett: op. cit. pp. 234–237.
[64] Vega: op. cit. pp. 10–21.
[65] Ibid. pp. 23–25.
[66] Ibid. p. 28.
[67] Schroeder: op. cit. pp. 25–28.
[68] Ibid. p. 24.
[69] Aristoteles: *EN* 1129a33–1129b1. Bywater: op. cit. pp. 89–90.
[70] Aristoteles: *EN* 1131a25–29. Bywater: op. cit. p. 94.
[71] Miller (1991): op. cit. pp. 289–292.

reading is closely related to the *Magna Moralia*'s exposition,[72] yet it could also be entertained irrespective of it. It could show that the principles of natural justice are capable of admitting variance, but it could also show that like right handedness, the domain of natural justice is variable. Since, the problem of right handedness is introduced by καὶ ἐπὶ τῶν ἄλλων ὁ αὐτὸς ἁρμόσει διορισμός,[73] I think it is more plausible to assume that right handedness serves as an example for variance, but not an example for natural justice or normative nature.

Finally, great stress has been laid on Aristotle's controversial insistence on the best constitution. The Greek text itself (ἐπεὶ οὐδ' αἱ πολιτεῖαι, ἀλλὰ μία μόνον πανταχοῦ κατὰ φύσιν ἡ ἀρίστη) allows two translations: Aristotle could either mean that there is one constitution which is by nature best everywhere, or that everywhere there is one constitution which is best by nature. Most commentators side with the first option,[74] which sets the stage for a normative comparison of constitutions by virtue of their intrinsic merits.[75] This majority view is challenged only by Ronald Polansky, who argues for the existence of 'one universal standard of the just',[76] and John Mulhern, who offers a rather compelling interpretation to Aristotle's use of πανταχοῦ.

According to Mulhern, Aristotle's employment of πανταχοῦ betrays that he could not possibly mean 'one and the same' because, in line with the other occurrences in the chapter, Aristotle 'should not have availed himself of the idiom μία καὶ ἡ αὐτή or something else of the kind'.[77] Moreover, Mulhern is apt to note that Aristotle fails to designate the best form of constitution in the *Politics*; rather, he is talking about natural and unnatural forms,[78] implying that different people may be suited with different laws. Hence, Mulhern's interpretation escapes the fallacious metaphysical reading of one best constitution, serving as the normative criterion for validity, as it makes room for a variety of constitutions and a variability of natural justice.[79]

Conclusion

After having dully investigated the crucial chapters, chapter six and seven of the *Nicomachean Ethics*, I think it can be settled with confidence that Aristotle's analysis of political justice is an elaboration on justice *simpliciter*, and so it is unrelated to his prior treatment of special justice in distribution or rectification. Political justice is, then, that variety of justice which belongs only to those who are equal and whose relations are naturally governed by law; hence, all considerations of political justice cannot but be dependent on law itself. And it is this premise on which any sound analysis of Aristotle's potential contribution to the doctrine of natural law, that is, his ambiguous division of natural and conventional justice, may be established.

Based on a thorough overview of the interpretive traditions, I have identified two obstacles, capable of frustrating our understanding of Aristotle. The first such obstacle is the delineation of Aristotle's subject-matter, namely, what is political justice concerned with? And secondly, how may Aristotle's distinction of variable custom and invariable nature may be reconciled with? Since I could not endorse and subscribe to any established interpretive traditions due to the varying degree of their immanent inconsistencies or methodological fallacies, I have proposed a novel reading but in alignment with the traditional patterns. As such, I have argued that the subject-matter of chapter seven is political justice as a disposition or interpersonal relation which is regulated by law and having its authority derived either from legislative enactment or natural equality. And so, Aristotle's distinction of natural and conventional justice is far from being a horizontal division; rather, it is a separative division of two opposite sources for legal authority. This means that those relationships in which political justice may be rationalised are either established through legal enactment, like the settling of ransom or rules of

[72] Aristoteles: *Magna moralia*. I.33.
[73] Aristoteles: *EN* 1134b33. Bywater: op. cit. p. 103.
[74] Corbett: op. cit. pp. 238–240; Lisi: op. cit. pp. 142–144; Miller (1991): op. cit. p. 288; Zanetti: op. cit. pp. 51–54; Zingano: op. cit. pp. 213–214.
[75] Lisi: op. cit. p. 144; Miller (1991): op. cit. p. 288; Zanetti: op. cit. p. 54.
[76] Polansky: op. cit. pp. 171–172.
[77] John J. Mulhern: *ΜΙΑ ΜΟΝΟΝ ΠΑΝΤΑΧΟΥ ΚΑΤΑ ΦΥΣΙΝ Η ΑΡΙΣΤΗ (*EN *1135 a 5).* p. 262. In Phronesis, Vol. 17, No. 3, 1972. pp. 260–268.
[78] Aristoteles: *Politica* 1287a8–16, 1287b37–40.
[79] Mulhern: op. cit. pp. 267–268.

sacrifice, or they are stemming from natural equality, combined with a peculiar understanding of worth, attending on the principle of equality. Aristotle does not provide any examples of this latter sort, but the classification of different constitutions could serve as such an example.[80]

Finally, as to Aristotle's potential contribution to the doctrine of natural law, I think it can be settled that based on the *Nicomachean Ethics* there is no recognisable natural law position with which Aristotle may reasonably be associated. The natural justice of the *Ethics* does serve as a source for law but only in terms of authority, without any implications to moral validity. What is more, natural justice does not have the force of law, unless it is posited and being accepted by a given political community.

[80] Aristoteles: *EN* 1131a24–29. Bywater: op. cit. p. 94.

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