

## NATURAL RIGHT AND ARISTOTLE'S UNDERSTANDING OF JUSTICE

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**D**OES ARISTOTLE CLAIM that the nature of things provides us with an absolutely correct standard of justice? In this article, I argue that, despite his reputation as a founder of natural right and natural law theory, he does not. Aristotle certainly insists that right or justice exists “by nature (*phusei*)” as well as by agreement (*Nicomachean Ethics [NE]* 1134b30).<sup>1</sup> That he does so is one of the few points in his discussion of natural and conventional right about which there can be no doubt or disagreement. In what follows, however, I shall try to show that Aristotle’s claim about the naturalness of right does not commit him to what we have come to call natural right – that is, the idea that for every particular situation there exists one inherently just state of affairs against which we can measure the justice of our actions and opinions. Aristotelian natural right, I argue, does not refer to a set of higher standards of justice. It refers, instead, to a *kind* of judgment about justice that develops naturally in political communities.

Citizens derive the justice and injustice of their actions, according to Aristotle, either from agreements to designate otherwise indifferent actions as just and unjust or from their judgments about the intrinsic merits of particular actions. The former class of judgments, I suggest, makes up conventional right, the latter, natural right. Aristotelian natural right, according to my interpretation, includes *all* the judgments made by citizens about the intrinsic justice or injustice of their actions, not merely those judgments that are correct and correspond somehow to the nature of things. In insisting upon the naturalness of justice, Aristotle thus is not, I argue, defending the existence of natural, inherently correct standards of justice. He is, instead, arguing that the need for citizens to make and argue about judgments of the intrinsic justice of their actions is something that develops naturally within political communities.

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I present and defend my reinterpretation of Aristotle's distinction between natural and conventional right in the *Nicomachean Ethics* in the first section of the article. In the second section, I discuss other passages of his works that commentators have used to support their claims that Aristotle conceives of natural right as a higher standard of adjudication. In the third section of the article, I look at the relatively rare cases in which Aristotle refers to nature to determine the justice of actions and social relationships. I argue there that we should not identify these judgments — for example, about the naturalness of slavery, paternalism, and the sharing of political power among free and relatively equal males — with the conception of natural right developed in the *Nicomachean Ethics*. They represent, instead, judgments about which individuals are equipped by nature to participate in, judgments about natural right. In the concluding section, I try to show how Aristotle can justify his frequent descriptions of properly enacted laws as unjust without invoking a higher standard of natural right.

Nature, according to Aristotle, provides us with a standard to determine which individuals should participate in political communities. It has equipped human beings (or at least some human beings) with capacities that lead them to develop communities in which they rely on one another's judgments about the intrinsic merits of their actions. It has not, however, equipped them with a final standard against which to measure those judgments.

### NATURAL AND CONVENTIONAL RIGHT

Aristotle's discussion of the distinction between natural and conventional right occupies little more than a page of the *Nicomachean Ethics*. Compared to succeeding weighty tomes on natural law, it appears amazingly brief and compressed. Nevertheless, these few sentences have inspired commentators to describe Aristotle as "the philosophic founder of authentic natural law," for whom natural right represents "the eternal laws of morality" and an "immutable" standard of justice whose superiority to all mere opinion and positive law is "self-evident" and "absolute."<sup>2</sup> A much smaller group of commentators has denied that this brief passage of the *Nicomachean Ethics* develops the idea of a final, inherently correct standard of justice.<sup>3</sup> As I have already indicated, I agree with the conclusions of this second group of commentators. None, however, has provided, in my judgment, a satisfactory account of what Aristotle means by natural right if not a description of an

inherently just state of affairs.<sup>4</sup> There is thus good reason to reexamine this often overinterpreted chapter of the *Nicomachean Ethics*.

Aristotle makes three major claims about natural right in this passage. First, he describes natural right as part of what he calls "political right" (*to dikaion politikon*), which, in turn, refers to the kind of justice that develops among free and relatively equal individuals who rule one another through laws (*NE* 1134b18, 1134a29). Second, he insists that contrary to what "some people" believe, justice exists "by nature" (*phusei*) as well as "by convention and agreement" (*nomikon kai sunthēkē*) (*NE* 1134b24-32). Finally, he suggests that natural right is as mutable as conventional right (*NE* 1134b33). By admitting the mutability of natural right, Aristotle defuses his predecessors' strongest objection to the naturalness of justice: that standards of justice, unlike natural things, differ from place to place and time to time. But this admission makes it much more difficult to determine exactly what Aristotle means by natural right.

Our interpretation of Aristotle's understanding of natural right depends upon how we put together these three claims. The most common interpretation identifies Aristotelian natural right with the stoic, scholastic, and rationalist conceptions of natural law, all of which treat natural law as an eternal, universal, and unchanging standard of justice. But to maintain this interpretation, commentators must either ignore Aristotle's claim about the mutability of natural right or gloss it in some way to make it compatible with an unchanging standard of justice. St. Thomas Aquinas, who identifies Aristotle's conception of natural right with his own conception of an eternal and immutable natural law, provides an example of such a gloss when he suggests that Aristotle meant only to say that the particular rules through which human beings apply the unchanging fundamental principles of natural right may vary.<sup>5</sup> Other commentators have suggested that Aristotle's best regime, which Aristotle describes here as "the best everywhere by nature" (*NE* 1135a5), provides us with an unchanging standard of natural right, but a standard that must be applied in different ways to different situations.<sup>6</sup>

Such glosses on Aristotle's explicit argument become especially hard to accept when we recognize that Aristotle insists not only that natural right is changeable, but also that natural and conventional right are "both equally changeable" (*amphō kinēta omoios*) (*NE* 1134b33). Mutability does not merely refer to exceptions or qualifications that he recommends we add to a generally correct view of an unchanging natural right. It characterizes natural right as a whole, and thus plays no role in distinguishing natural from conventional right in the *Nicomachean Ethics*.

It is easier to reconcile the idea of naturally correct standards of justice with Aristotle's claims about the mutability of natural right if we cease to identify natural right with general rules. We might then argue that in every particular situation there is one naturally just result toward which we should aim, even if those particular results cannot be derived from any general rule or law.<sup>7</sup> Such an interpretation of Aristotelian natural right appears to offer a much more promising means of reconciling Aristotle's major claims about the subject. But it, too, I believe, misses the main point of Aristotle's distinction between natural and conventional right.

Aristotle begins his discussion of natural right by asserting that political justice has two parts: natural (*to phusikon*) and conventional (*to nomikon*) right. It is his initial contrast between these two forms of political justice that leads commentators to treat them as higher and lower standards of adjudication.

Natural right has the same force everywhere, and does not exist by its seeming so or not. Conventional right, however, concerns that which is originally indifferent, but once it has been laid down is not indifferent, for example, that a prisoner's ransom shall be one mina, or that a goat and not two sheep should be sacrificed (*NE* 1134b18-23).

It is not surprising that most readers have seen this passage as an attempt to distinguish things that are just in themselves from things that are just merely according to our opinions and conventions. Aristotle does, after all, describe natural right here as the justice that has "the same force (*dunamin*) everywhere and does exist whether its seems so or not." This description seems to distinguish natural right from the form of justice whose authority depends upon our opinions about what is just. Nevertheless, we can maintain this interpretation only by ignoring the particular way in which Aristotle contrasts conventional with natural right.

In discussing this passage of the *Nicomachean Ethics*, few commentators devote much attention to the way in which Aristotle defines conventional right. They seem to assume that he means by it much the same thing we usually mean by positive right and convention, and, accordingly, associate it with the whole range of a community's shared opinions about justice. Given this understanding of conventional right, it seems logical to treat its counterpart, natural right, as the body of true or correct opinions about justice.

But conventional right, as Aristotle defines it here, does not refer to the whole range of opinions and conventions that individuals and communities use to define justice. He gives it a far narrower and more specific definition. "Conventional right concerns that which is originally indifferent, but when

it has been laid down is not indifferent.” Conventional right refers to actions we describe as just and unjust and about which we would be indifferent were it not for a prior agreement. We see no intrinsic merit in, say, sacrificing one goat to the gods rather than two sheep, or driving on the left rather than the right side of the road. But once we agree to fix the rules of sacrifice and driving, then we speak of the injustice of those who make the wrong sacrifice or drive on the wrong side of the road. Aristotle uses conventional right to designate standards of justice we call upon in situations in which the intrinsic merits of actions do not concern us. Conventional right concerns those actions whose justice or injustice we determine by looking to the mere fact of agreement rather than to good judgment.

Conventional right, so understood, cannot represent the standards of justice asserted by positive law and opinion, for it clearly excludes the majority of the opinions, laws, and customs we use to define our standards of justice. We are hardly indifferent about the kinds of actions prescribed and proscribed, for example, by criminal law. Nor are we indifferent about the political questions settled by constitutional law. Because Aristotle divides political right into natural and conventional right, and our judgments on these matters do not fit into the category of conventional right, it seems that we must treat them as part of natural right. Lacking any further divisions of political right, we must conclude that Aristotelian natural right includes all of our judgments about the justice of all matters about which mature and relatively reasonable individuals would not be indifferent. It cannot represent the absolutely correct standard against which we measure the justice of particular actions and states of affairs, no matter whether we conceive of this standard as a general rule or as an intrinsically particular judgment. Francis Wormuth’s paradoxical conclusion about Aristotelian natural right is thus correct: Aristotle’s distinction between natural and conventional right “is the strongest evidence that he had no conception of a natural law that annuls positive law.”<sup>8</sup>

Aristotelian natural and conventional right, I suggest, represent two *kinds* of justice found in the political community rather than higher and lower *standards* of adjudication. In the *Nicomachean Ethics*, Aristotle tells us that we will find two different kinds of justice in political communities. One, conventional right, derives its justice from agreements to designate actions, about which we would otherwise be indifferent, as just or unjust. The other, natural right, derives its justice from judgments about what would be the appropriate actions to perform in particular situations. In the issues that involve natural right we look for good judgment, because we are concerned to see them resolved correctly. In the issues that involve conventional right,

we look only to agreement, because we are merely concerned to see that everyone follows the same standard, whatever it may be.

Aristotle's suggestion that "it is clear [*dēlon*] what things are just by nature and what by convention and agreement" (*NE* 1134b32) confirms my interpretation. This would be a very strange claim for him to make if he conceived of natural right as the inherently correct measure of justice.<sup>9</sup> It would imply that it is easy to distinguish inherently correct standards of judgment from the innumerable incorrect and only partly correct standards we come across in our lives. It would be an especially strange assertion for Aristotle to make if he thought of natural right as something that changes with the peculiarities of each situation rather than as a general rule. For, in that case, Aristotle would be suggesting that the correct exercise of practical reason in particular situations would be easy, something he clearly denies (*NE* 1109a28).<sup>10</sup> He insists, instead, that knowing how to act justly is, contrary to the opinion of most people, very difficult (*NE* 1137a10). It is easy, according to Aristotle, to distinguish between naturally and conventionally just things because to do so we need merely distinguish issues whose intrinsic merits do not concern us, such as the number of animals to sacrifice or the proper side of the road for driving, from issues whose intrinsic merits do concern us, such as whether and how to punish theft or distribute political power.

Moreover, Aristotle never suggests that natural and conventional right represent two competing *standards* of adjudication. He does not provide us with examples of cases in which conventional and natural standards of justice conflict, which we would expect him to do if he thought of them as higher and lower standards. He does not say, for example, that no matter what people do or believe, it is by nature right to return prisoners for ransom. Instead, he merely says that the amount of a ransom is, in itself, a matter of indifference to be settled by prior agreement or custom, and thus a matter of conventional right (*NE* 1134b21). We find no challenge of conventional right by the standards of natural right in the *Nicomachean Ethics*, let alone advice about how we might "raise" conventional standards higher and toward natural standards.<sup>11</sup>

Indeed, in his *Refutations of the Sophists* (173a6-19), Aristotle goes so far as to condemn the use of nature/convention contrasts to evaluate arguments as a mere means of generating self-serving paradoxes. And when he discusses appeals to higher natural standards of justice in the *Rhetoric*, he portrays them as a self-serving means of persuasion. When the city's written law is against you, he suggests, appeal to the unwritten natural laws of mankind; when the jury's sense of the latter is against you, appeal to the written laws of the city (*Rhetoric* 1375a25-b26).<sup>12</sup>

*THE NATURALNESS OF ARISTOTELIAN NATURAL RIGHT*

What then is "natural" about Aristotelian natural right if not the existence of truly just states of affairs defined by the nature of things? "Natural things," Aristotle states in the *Physics* (198b35), "either always or for the most part come about in a particular way." "Fine and just actions, which politics investigates, possess so much variety and irregularity that they seem to some people to exist by convention only, and not by nature" (*NE* 1094b14). Aristotle's opponents denied that justice could be natural because of the extreme variability of its standards.<sup>13</sup> Aristotle agrees that the standards of justice, unlike the motion of fire, are variable (*NE* 1134b25). By doing so, he rules out the possibility that the particular standards of justice that arise in political communities exist by nature. For fire, like "the majority of natural things exists for the most part," not always (*Metaphysics* 1027a8ff). In contrasting the standards of natural right to the behavior of fire, Aristotle is contrasting the variability of those standards to something that already exists "for the most part." He thus cannot be suggesting that the standards of natural right themselves exist for the most part — that is, come into being in the same way except for the unusual occasions where accidents produce exceptions.<sup>14</sup> We immediately receive confirmation that this cannot be his meaning when he states that the standards of natural and conventional right are "equally changeable" (*NE* 1134b33). The particular standards associated with natural right do not exist "for the most part"; they vary as much as do the assertions of conventional right. Thus, they cannot represent the natural element of Aristotelian natural right.

The naturalness of Aristotelian natural right lies in the kind of judgment it describes rather than in the particular standards that it contains. When Aristotle insists that part of political justice exists by nature, he is suggesting that when free and relatively equal individuals come together to form a community in which they rule and are ruled by means of laws, they will "for the most part" have recourse to the particular kind of judgment that Aristotle calls natural right. Natural right is natural in the same way that the political community is natural. Like the polis, it develops, for the most part, when free and relatively equal individuals come together.<sup>15</sup> Moreover, judgments about natural right, like the political community itself, reflect and develop the highest practical capacity nature gives to human beings: their capacity to receive the training that promotes moral virtue and practical wisdom.<sup>16</sup> Judgments of natural right are thus natural both in their origin and end.<sup>17</sup> Moreover, unlike the particular standards of natural right applied by different

communities, this way of judging things comes into being “for the most part,” at least where free and relatively equal individuals come together.

Every form of community, Aristotle argues, has forms of justice appropriate to it (*NE* 1159b27; *Eudemian Ethics*, afterward *EE*, 1241b15). The form of justice appropriate to political communities includes natural as well as conventional right. The judgments that members of such communities make about justice is not restricted to determining whether individuals live up to their agreements to treat particular actions as condemned or approved. That is one kind of judgment citizens make about justice. But they also make judgments that require discernment of the intrinsic value of particular actions. This kind of judgment, Aristotle is telling us, develops by nature in political communities, and exercises the highest practical capacities found in human nature.

Aristotle refutes the claim, associated with the Sophists, that justice exists merely by convention among human beings. But he does so only by altering the meaning of natural and conventional right. He substitutes his relatively narrow and specific definition of conventional right for the more familiar — in his time as well as ours — identification of conventional right with opinion and established law. And he treats natural right as a kind of judgment about justice rather than as a particular set of standards inherent in the nature of things.

It might seem strange that Aristotle reformulates the nature/convention distinction in a manner that differs so sharply from the way in which it was popularized by Greek philosophers and orators. But the partial acceptance and partial modification of the opinions of the many and the wise is Aristotle's normal mode of inquiry, especially in Book 5 of the *Nicomachean Ethics*. Every reputable opinion, he suggests, “says something true about the nature of things, and while individually they contribute little or nothing to the truth, by the union of all a considerable amount is amassed” (*Metaphysics* 993b1). Book 5 amasses truth by discerning the partial truth contained in a great number of conflicting opinions about justice. For example, he reformulates the Pythagorean and general opinion that identifies justice as a whole with reciprocity into the principle that makes commercial exchange possible (*NE* 1132b21ff). The truth that Aristotle uncovers in opinions about reciprocity and justice lies very far from the significance most often associated with them. It is as if someone claimed that the real meaning of the Biblical injunction to return an eye for an eye concerns the way in which we settle on the price of goods. This reformulation of familiar opinions is at least as radical as the reformulation of natural and conventional right that I have been



discussing. But because few contemporary philosophers or political theorists continue to be beholden to Pythagorean conceptions of justice as they are to the original meaning of natural right, Aristotle's reformulation of reciprocity does not strike them as very odd.

By changing the terms of the debate, Aristotle does not merely engage in a clever debating trick. His claims about the existence and character of natural right are interesting and important, even if they do not provide the refutation his opponents would demand. Some political philosophers, such as Hobbes, have dreamt of attaining civil peace by persuading us to stop arguing with one another about the intrinsic merits of our judgments about justice and injustice. Hobbes tells us that, properly understood, justice means nothing more than the enforcement of agreements. To argue otherwise, he insists, is both irrational and dangerous. Aristotle's argument about natural right suggests, in contrast, that we cannot reduce justice to adherence to prior agreements without suppressing the natural capacities of human beings to engage in practical judgment and political argument.<sup>18</sup>

#### *APPARENT SYNONYMS FOR NATURAL RIGHT IN ARISTOTLE'S WORKS*

Book 5, Chapter 7 of the *Nicomachean Ethics* represents Aristotle's only explicit inquiry into the character of natural right. Nevertheless, Aristotle's commentators claim to have found considerable evidence of his belief in an absolutely correct natural standard of justice in a number of other passages in his works. Gauthier and Jolif, for example, list the following Aristotelian expressions as synonyms for natural right: "primary (*to proton*) justice (*NE* 1136b34), pure and simple (*to haplōs*) justice (*Sophistical Refutations* 180b34), the universal, unwritten (*koinon, agraphon*) law (*Rhet.* 1368b7), and the universal law based on nature (*Rhet.* 1373b6)."<sup>19</sup> The most important and influential of these passages are those from the *Rhetoric*, for here Aristotle mentions a "common," "unwritten," "unchanging" standard of right called "natural law" (*Rhet.* 1373b6, 1375b31). According to many commentators, the *Rhetoric* "leaves no doubt" that Aristotle believed in the existence of a natural and absolutely correct standard of justice.<sup>20</sup>

I suggest, on the contrary, that Aristotle's reference to natural law in the *Rhetoric* should raise many questions and doubts—most of all because it plainly contradicts his account of natural right in the *Nicomachean Ethics*. That account leaves no room for an "unchanging" law of nature, because, as we have seen, it treats natural and conventional right as "equally change-

able." If one assumes, like Max Hamburger, that the *Rhetoric* represents "the final consummation of Aristotle's legal philosophy and theory," one might be inclined to reinterpret Aristotle's discussion of natural right in terms of this idea of an unchanging law of nature.<sup>21</sup> But because the *Nicomachean Ethics* provides Aristotle's only direct inquiry into the subject of natural right, we should be very hesitant to subordinate its claim to those of briefer and less direct discussions. Besides, there are other strong reasons to doubt that the *Rhetoric*'s reference to the existence of an unchanging natural law represents Aristotle's full opinion on the subject.

The *Rhetoric* is, after all, a work about means of persuasion rather than an inquiry into the good for human beings. It "is not an 'Ethics,' " as Max Salomon reminds us; "it strives for universal comprehension," rather than knowledge of the good.<sup>22</sup> Aristotle defines rhetoric as "the capacity of observing in any case the available means of persuasion" (*Rhet.* 1355b26; cf. *Topics* 101b8). As such, it "must rest its modes of persuasion and argument on common opinions (*ton koinon*), as we observed in the *Topics*" (*Rhet.* 1355a27). In the *Topics*, Aristotle explains that the starting points for dialectic and rhetorical argument are "reputable opinions," which include those opinions advanced "by everyone, or by the majority, or by the wise" (*Topics* 100b20). We learn how to argue and persuade others by learning how to make use of the principles embedded in the opinions that people generally respect. The notion that there is an unchanging "natural law" common to all human beings is something that "everyone to some extent divines" and is confirmed by wise men such as Sophocles and Empedocles (*Rhet.* 1373b6). It is thus very much available as a basis upon which to build persuasive arguments. In the context of the *Rhetoric*, that is all we need conclude that Aristotle is saying about natural law.

I am not suggesting, however, that Aristotle simply dismisses the notion of natural law because it is a mere opinion. Aristotle has great respect for the reputable opinions of the many and wise. All such opinions contain a certain element of truth, for "the truth seems to be like the proverbial door, which no one can fail to hit" (*Metaphysics* 993b1-5). Aristotle starts with reputable opinions in all of his other inquiries, whether they concern natural or practical sciences.<sup>23</sup> But in these other inquiries, unlike in the *Rhetoric* and the *Topics*, Aristotle refines reputable opinions to see what partial contribution they make to the truth. Because we are aiming at persuasion rather than truth in the *Rhetoric*, there is no need to sift and refine the reputable opinions with which it begins — indeed to do so would be counterproductive. Consequently, we should take Aristotle's statements in the *Rhetoric* about natural law and the unchanging common standard of justice it contains as unrefined opin-

ions of the many and of some wise men. We see in the *Nicomachean Ethics* Book 5, Chapter 7, how Aristotle refines such an opinion. Among the many elements of that opinion he removes are the beliefs that natural right is unchanging and that it is a law.

This interpretation of the *Rhetoric* is confirmed by the way in which Aristotle uses the notion of a higher standard of right in the *Rhetoric* as the basis for successful arguments in court when the written law is against us. "If the written law tells against our case clearly we must appeal to the universal law and equity as more just. . . . We must urge that the principles of equity are eternal and unchanging, while written laws frequently change." We should refer to "the lines in Sophocles' *Antigone*" about the eternal, unwritten law, and argue that "the better man will follow and abide by the unwritten law in preference to the written." "If, however, the written law supports our case, we must urge" the judges against "trying to be cleverer than the laws" by referring to some unwritten, superior standard of justice (*Rhet.* 1375a26-75b25). Aristotle offers no advice to jurors about how to judge such arguments, although he is quite free with advice to jurors on other topics.<sup>24</sup> He certainly never suggests that the unwritten laws of nature should always overrule a written law. As a result, I see no reason to take his reference to natural law in the *Rhetoric* as evidence of his belief in a higher and absolutely correct natural standard of justice.

There is also no reason to take Aristotle's frequent references to the "unwritten law," here in the *Rhetoric* and elsewhere, as references to natural right, as Gauthier and Jolif take them to be.<sup>25</sup> Like most Greeks, Aristotle treats unwritten laws as an ordinary part of every community's legal order, originating in either custom or the judgments of legislators.<sup>26</sup> Moreover, even if they did refer to natural right, they would provide no evidence that Aristotle thought of natural right as a higher and absolutely correct standard of justice. For Aristotle never suggests that unwritten laws necessarily overrule written laws as higher standards of justice. The unwritten law, for Aristotle, includes the particular customs of a community, as well as customs more generally observed (*Rhet.* 1373b5). It can occasionally recommend absurd and unreasonable standards, especially when it is very ancient (*Pol.* 1269a8). If reason can conflict with unwritten law, then the latter can hardly represent an absolutely correct standard of justice.

We can dispose more quickly of a third expression, "primary [or prior] justice" (*to protē dikaion*), which some commentators have identified with natural right.<sup>27</sup> Aristotle uses the term in contrast to legal justice in the following passage: "Again, if the distributor gave his judgment in ignorance, he does not act unjustly in respect of legal justice, and his judgment is not

unjust in this sense, but in a sense it is unjust, for legal justice and primary justice are different" (*NE* 1134b32). The passage concerns the difference between unjust acts and acting unjustly. Ignorance can lead individuals to commit unjust acts, but they need not be punished by the law for these acts, since because of their ignorance they did not act unjustly—that is, from a disposition to act unjustly. There remains, however, a sense in which their acts are unjust: They are the acts that unjustly disposed individuals would commit in those circumstances. But there is no hint of a higher natural standard of justice superior to the law here; for the unjust act that the law does not punish is still the same one condemned by the law. The "primary" sense of justice here refers to the acts of justly disposed individuals. Such individuals are disposed to follow laws. Even when, because of mitigating circumstances, someone is not punished for breaking a law, we can still say that his or her action was unjust in a sense, because it was not something that a justly disposed individual would perform.

Aristotle's discussion of equity at the end of Book 5 of the *Nicomachean Ethics* also figures prominently in many discussions of his conception of a higher and absolutely correct standard of natural right.<sup>28</sup> "The equitable," Aristotle suggests, is needed as "a corrective of what is legally just. The reason is that all law is universal, but there are some things about which it is not possible to speak correctly in universal terms." When "the case at issue happens to fall outside the universal formula, it is correct to rectify the shortcoming, in other words, the omission and mistake of the lawgiver due to the generality of his statement" (*NE* 1137b12-23).

How do judges know what constitutes a "correction" of the omissions and mistakes created by the generality of laws? Some commentators suggest that Aristotle recommends that they should consult a higher, more accurate standard of natural right. Gauthier and Jolif, for example, suggest that Aristotle is asking judges to refer to "the law inscribed in the heart of man, the norm of natural right that opposes itself to written laws." Equity, they conclude, reflects a "superior law in nature," rather than an indulgent or compassionate disposition.<sup>29</sup> Because Aristotle himself never mentions natural right or natural law in his discussion of equity, their conclusion rests upon the assumption that to "correct" the justice contained in laws, one must have recourse to a higher, more correct standard against which to measure laws.

Aristotle, it seems, does not share this assumption, for he insists that equity corrects laws according "to what the lawgiver himself would have said were he present" (*NE* 1137b22), rather than according to a standard higher than that enshrined in the laws. "In situations where it is necessary to speak in

universal terms but impossible to do so correctly, the law misses the mark. The law is nonetheless correct" (*NE* 1137b17). Because life would not be long enough to enumerate the infinite number of cases to which a law may apply, equitable judges should sometimes look "not to the letter of the law but to the intention of the legislator" (*Rhet.* 1374b10-30). Aristotle is not dealing with two separate standards, one within and the other beyond the law. Instead, he is speaking of two ways of applying the standards enshrined in the law. Equitable judges consult the spirit of the law to correct its letter; they do not measure laws against higher, more natural standards of justice.

Finally, we must consider the discussion of natural right in the *Magna Moralia*, a discussion that parallels and significantly diverges from the treatment in the *Nicomachean Ethics*. Were we to take this discussion as Aristotle's final word on the subject, we would have to reject my argument in this article. The *Magna Moralia* unambiguously describes natural right as what is "truly and naturally just," in contrast and superior to the justice of established laws (*Magna Moralia*, afterward *MM*, 1195a5, 1196b2, 1198b32). Moreover, it identifies natural right with equity and unqualified justice (*MM*, 1198b30). Scholars have, of course, offered many reasons to doubt that Aristotle composed the *Magna Moralia*. But other scholars have offered powerful arguments in support of his authorship.<sup>30</sup> Because the issue of the *Magna Moralia*'s authorship remains highly controversial, it should not, in my opinion, be used to settle questions of interpretation.

Nevertheless, whoever the author or authors of the *Magna Moralia* may be, their discussion of natural right differs in a significant enough manner from that found in the *Nicomachean Ethics* to undermine its value as an aid to the interpretation of the latter discussion. The *Magna Moralia* contrasts natural right with political right. It identifies natural right with "the truly and unqualifiedly just" and political right with conventional right (*MM* 1196b2, 1198b32, 1195a6). This conception of the distinction between natural and conventional right corresponds to the most familiar conceptions of the distinction in the fourth century.<sup>31</sup> But for precisely this reason it seems unhelpful in interpreting the treatment of natural right in the *Nicomachean Ethics*, which clearly departs from this general understanding.

In general, the *Magna Moralia*'s treatment of justice departs from the *Nicomachean Ethics*' precisely on those points where the latter makes its subtlest and most original points. The *Magna Moralia* omits the *Nicomachean Ethics*' claim that the moral virtues, like justice, are not natural, its original account of the relationship between equity and law, and its definition of conventional right in terms of otherwise indifferent actions rather than in terms of opinion, as well as its striking claim that natural right is a part of

political right. Perhaps the *Magna Moralia* is an earlier, more conventional version of Aristotle's ethical philosophy. Perhaps it is the version written down by later students who did not know what to do with the unorthodox passages they found in Aristotle's manuscripts.<sup>32</sup> In either case, the *Magna Moralia's* conception of natural right merely highlights, in contrast, the originality of the conception we find in the *Nicomachean Ethics*.

### NATURAL CAPACITIES AND POLITICAL COMMUNITY

There still remain some passages in which Aristotle seems to refer unambiguously to nature in assessing the justice of social relationships, even if he does not use the term natural right or any of its supposed equivalents. The best known of these passages is the argument in Book 1 of the *Politics* in which he tries to demonstrate that human slavery exists by nature as well as by law or force. The appeal to nature in these passages does not, I shall argue, correspond to the conception of natural right developed in the *Nicomachean Ethics*. Instead, nature is used in these passages to determine who has the capacity to participate in political community and thus the capacity to make the kind of judgments about the intrinsic merits of political actions that constitute natural right.

There are, as far as I see, four basic relationships among human beings that Aristotle describes as just by nature: the despotic rule of master over slaves, the superiority of human males over human females, the rule of mature individuals over the young, and the sharing of rule, regulated by laws, among free and relatively equal males. Slavery is just by nature rather than merely by law or force wherever there exists between individuals "such a difference as that between soul and body, or between men and animals." For "he who participates in reason enough to apprehend it, but does not have it, is a slave by nature" (*Pol.* 1254b15-25).<sup>33</sup> Aristotle argues that the domination of women by men, although less complete by nature than that of slaves by masters, is natural because women lack the natural capacities for rational deliberation possessed by men (*Pol.* 1260a). He derives this assessment from his dubious biological characterization of women as deformed men. Because the difference between the rational capacities of old and young is obvious, everyone accepts this distribution of power. Finally, Aristotle claims that, among free and relatively equal males, taking turns in ruling and being ruled "accords with nature" (*Pol.* 1279a10, 1259b1). This claim further implies that it is also natural for such individuals to live in political communities and share the bonds created by political justice.

All of these appeals to nature to measure the justice of social relationships concern the existence, or lack thereof, of natural capacities to participate in political communities. The lack of fully developed capacities for rational deliberation in slaves, women, and children justifies their subordination, in different ways, to the free adult males who are members of the political community. The possession of such capacities entitles one to share in political community and the determination of the content of political justice. Nature does not, in these cases, provide a standard against which to measure the judgments about justice made by members of political communities—except, of course, with regard to who is to be included in such communities, which is a relatively rare, although obviously important, judgment. It thus does not provide us with a higher set of standards of natural right according to which we can measure the justice of political acts and opinions. Instead, it provides us with a guide to determine who is capable of making judgments about “natural right,” as Aristotle describes it in the *Nicomachean Ethics*.

These natural justifications of social relationships do not form a part of Aristotelian natural right. Such a suggestion seems strange only because we usually identify natural right with higher standards of justification. Aristotle’s claims about the natural subordination of slaves, women, and children have a place in *our* conception of natural right as a higher standard of adjudication, but not in his own conception of natural right. The mistake most commentators have made is to use Aristotle’s very limited implicit reliance on something like our conception of natural right as a higher standard of justification as a guide to their interpretation of his own conception of natural right.

Moreover, reliance on natural distinctions to determine who should participate in political judgment but not the content of political judgment is not so strange a mode of procedure as it might at first seem. Indeed, it corresponds quite closely, I suggest, to the way in which many of us make judgments about justice. Almost all of us accept the relevance to political judgment of Aristotle’s distinction between the natural capacities of young and mature individuals. Most of us reject his claims about women’s lack of capacity to participate in the political community, but that is because most of us reject his claim that women are by nature deformed or imperfectly developed males. Most of us also reject Aristotle’s claims that there exist large numbers of individuals naturally suited to enslavement, although we do withhold full political rights from the mentally incompetent. But it is precisely because we claim that the natural differences among individuals rarely reaches anywhere near the extreme degree that Aristotle sets out as the criterion for natural slavery that we reject his conclusion. We draw the natural line of inclusion in political community at the boundary of our species. It is easy for us to do

so because there is a relatively sharp — although not nearly as sharp as once believed — distinction between our capacities and the capacities of the species closest to us. But as Steven Jay Gould reminds us, there is no natural necessity that that distinction be so clear. It is easy to imagine an evolutionary scenario in which there developed numerous species that would possess capacities midway between ours and the apes'.<sup>34</sup> Had such an evolutionary scenario unfolded, judgment about the natural capacities appropriate for participation in political community, a judgment we now make easily without much conscious reflection, would become much more complex and more closely resemble Aristotle's reasoning.

In the end, Aristotle makes two important arguments about the relationship between nature and justice. In the first, he claims that nature has equipped human beings with capacities that allow them to make and share a particular kind of judgment about justice, which he calls natural right. In the second, he claims that natural distinctions of gender, age, and mental capacity allow us to determine that free adult males are the members of the human species so equipped to engage in such judgments.

### NEITHER RELATIVISM NOR NATURAL RIGHT

Although I have argued that Aristotle does not appeal to nature as a final standard against which to measure the justice of our laws and political judgments, I do not mean to suggest that he has a positivistic or relativistic understanding of justice. His writings abound with claims that properly enacted laws and popular opinions are unjust. For example, in Book 3 of the *Politics*, he declares that democratic and oligarchic laws can be unjust, even if properly enacted by the community's ruling bodies.

If the poor as the majority distribute among themselves the goods of the rich, is this not unjust? "By Zeus, [they would say] it was justly resolved by the city's authoritative body!" What, then, ought one to say is the extreme of injustice? Is it just, therefore, for the minority and the wealthy to rule? If they act in the same way and plunder the possessions of the multitude, is this just? If so, the other is as well. That all of these things are bad and unjust, then is evident (*Pol.* 1281a15-25).

Aristotle's willingness to make such judgments suggests to many of his interpreters that he distinguishes between a lower, positivist conception of justice and a higher, natural one. One could say, for example, that pillaging the rich or exploiting the poor is just according to legal standards and the limited opinions of oligarchs and democrats, but is unjust according to the



higher standards of natural right. If, as I argue in this article this is not what Aristotle means to say, how can he explain and justify his claims that laws properly enacted by oligarchic or democratic rulers are unjust? Scholars will continue to look for a theory of natural right in Aristotle's political philosophy as long as this question remains unanswered. In this concluding section, I suggest an answer to this question, although given the constraints of space I must postpone a proper elaboration and defense of my claims until another occasion.<sup>35</sup>

It is only because we are inclined to think of justice primarily as a state of affairs, as some ordering of goods and social relationships, that we assume that Aristotle's description of properly enacted laws as unjust implies an acceptance of a higher standard of natural right. If the state of affairs defined by the law is not completely just, there must be, so it seems, a more completely just state of affairs against which we are measuring the justice of laws, a state of affairs defined by nature, reason, or some other higher authority. The great majority of modern jurists and philosophers think of justice and injustice primarily as descriptions of states of affairs.<sup>36</sup> For them, as for most modern readers, a just person is an individual who prefers and acts to establish the states of affairs we describe as just.

Aristotle, I suggest, reverses this familiar understanding of justice. For him, just states of affairs are those approved of and established by individuals whom we describe as just. Justice, as Aristotle understands it, refers primarily to a virtue of character and only secondarily to states of affairs.<sup>37</sup> If, like Aristotle, we treat justice primarily as a moral virtue—that is, as a set of dispositions that shape an individual's character—then we need not invoke a higher standard of natural right to declare properly enacted laws unjust.

Let us reconsider the passage in which Aristotle describes oligarchic and democratic laws as unjust with this general understanding of justice in mind. According to a natural right interpretation, these laws are unjust because they missed the target of a just state of affairs provided somehow by the nature of things. If, however, we start from the virtue-centered understanding of justice, the following alternative interpretation of Aristotle's argument emerges. In and of themselves, the oligarchs' and democrats' acts of expropriation are not unjust. It is not the act of expropriating the goods or labor of one class or another that leads Aristotle to condemn these laws as unjust, but rather the character of the actors who made them. When we denounce such laws as unjust, we are, according to this interpretation, insisting that no just individual, no individual in whom we recognize the character traits associated with justice, could have made such a law at that particular time and place. We are suggesting that only unjust individuals—in particular, individuals who dis-

play a disposition to grasp for more than their share of things<sup>38</sup> — could make such laws in that situation.

It might seem, however, that this interpretation of Aristotle's understanding of justice merely reintroduces a natural right argument through the back door. The naturally right states of affairs, one might suggest, are those that a perfectly just individual prefers in every particular situation. We may not be or know perfectly just individuals, but we should aim at the naturally correct judgments about justice they would make. Judgments about justice, one could continue, thus still oblige us to try to get things right by hitting a target that nature provides.

I am arguing, on the contrary, that there are, for Aristotle, no truly *correct* answers to questions about justice. Aristotle, I expect, would reject Ronald Dworkin's arguments that we have a right to expect from judges the right answers to the questions we put before them.<sup>39</sup> When we seek justice, he would argue, we seek the judgments of justly disposed individuals, rather than the correct answers to questions about justice. All just individuals would reject the highly exploitative laws we have been discussing. But in other, more difficult cases, the judgments of such individuals may not be identical. That does not necessarily mean that one of these judgments is just and the others are unjust. Because just states of affairs are those made by individuals who manifest all the elements of a just character, a number of different states of affairs in any particular situation may deserve to be described as unqualifiedly just. Aristotle's virtue-centered understanding of justice provides no single, absolutely correct standard or judgment, not even a particularistic standard that records the correct judgments to be made in every particular situation.

In a famous passage at the beginning of the *Nicomachean Ethics*, Aristotle warns us that in questions about "what is noble and just . . . we must be satisfied to indicate the truth with a rough and general sketch . . . for a well-educated man is one who searches for the degree of precision in each kind of study which the nature of the subject at hand admits" (*NE* 1094b 15-25). I suggest that the imprecision Aristotle discusses here refers to the inherent indeterminacy of ethical judgments as well as to their inherent particularity. It is the lack of inherently correct answers, not merely the vast variety of ethical situations, that keeps him from spelling out for us the right things to do. Aristotle seems to believe that there is a right *manner* in which to act — that is, according to the dispositions of a virtuous individual — but not a single inherently correct set of actions to perform.

According to the view held by most scholars, Aristotelian political actors have a natural standard, whether in the form of a general rule or particular

states of affairs, to guide their deliberation about legislation. In the *Topics*, Aristotle insists, to the contrary, that the common opinion that "law is the measure or image of the things that are by nature just" is neither literally nor metaphorically true. "Such phrases," he suggests, "are worse than metaphor." A metaphor makes use of a similarity between an object of description and something else to make the object familiar and comprehensible to us. But "there is no likeness in virtue of which the law is a measure or image. An image is something produced by imitation, and this is not found in the case of the law" (*Topics* 140a7-15). If we describe law as an image or imitation of natural right, we are seriously misrepresenting it, Aristotle suggests here. For law is not in any sense an imitation of something else, and, in particular, it is not an imitation of a higher natural standard of justice.<sup>40</sup>

Aristotelian natural right does not represent a higher standard of justice whose image we should seek, insofar as possible, to realize in our laws. Although nature, according to Aristotle, leads us to make political judgments about the intrinsic justice or injustice of our actions, it does not provide us with a final standard against which to measure these judgments. Argument about the intrinsic merits of our actions, argument that can never be definitively settled by appeal to an authoritative natural standard, is for Aristotle a central and inescapable element of political life.

## NOTES

1. References in parentheses refer to title and standard page numbers of Aristotle's works in Bekker's Berlin edition.

2. The quotations refer, respectively, to P. Trude, *Der Begriff der Gerechtigkeit in der Aristotelischen Staatsphilosophie* (Berlin: de Gruyter, 1955), 177; E. Barker, *The Political Philosophy of Plato and Aristotle* (New York: Dover, 1959), 326; W. von Leyden, *Aristotle on Equality and Justice* (London: Macmillan, 1985), 74; and W. Siegfried, *Der Rechtsgedanke bei Aristoteles* (Zurich: Schulthess & Co., 1942), 57, 62.

3. See, for example, F. Wormuth, "Aristotle on Law," in *Essays in Law and Politics* (Port Washington, NY: Kennikat, 1978), 14-26; M. Salomon, *Der Begriff der Gerechtigkeit bei Aristoteles* (New York: Arno Press, 1979), 50-72; and J. Ritter, "Naturrecht bei Aristoteles," in *Metaphysik und Politik* (Frankfurt: Suhrkamp, 1969), 133-179.

4. Ritter makes the most extended attempt to provide an alternative interpretation of the "natural" character of Aristotelian natural right. He argues that because human beings require the polis to complete their nature, we have to look to political practice, rather than to biology, to get a glimpse of human nature. "The praxis of politics is the actualization of human nature." Aristotle's political justice is thus natural for Ritter because it manifests human nature. We only know what we are by what is manifested in the various and changing laws of political communities (J. Ritter, "Naturrecht bei Aristoteles," 170, 157ff; see also "Das Bürgerliche

Leben," in *Politik und Metaphysik*, 70-77). This is an ingenious, but overly Hegelian interpretation, it seems to me. It requires us to give nature a completely different meaning when Aristotle applies it to man than when he applies it to all other natural things.

5. Thomas Aquinas, *Commentary on the Nicomachean Ethics*, paragraphs 1017-1018. Harry Jaffa clearly demonstrates the extent to which Aquinas's interpretation goes beyond Aristotle's understanding of natural right. See H. Jaffa, *Thomism and Aristotelianism* (Chicago: University of Chicago Press, 1952), 174-182. See W. von Leyden, *Aristotle on Justice and Equality*, 72; and A. MacIntyre, *Whose Justice? Which Rationality?* (South Bend, IN: University of Notre Dame Press, 1988), 120, for interpretations similar to Aquinas's.

6. For example, D. Keyt, "Distributive Justice in Aristotle *Ethics* and *Politics*," *Topoi* 4 (1985): 23-45, 32; and M. Hamburger, *Morals and Law: The Growth of Aristotle's Legal Theory* (New Haven, CT: Yale University Press, 1951), 62. J. J. Mulhern argues against the usual interpretation of the phrase "the best everywhere by nature" as a claim about the unchanging nature of the best regime. He suggests instead that Aristotle is merely noting that in every particular situation there is a regime that is, by nature, the best. See J. J. Mulhern, "Mia monon pantaxou kata phusin hē aristē," *Phronesis* 17 (1972): 260-268.

7. For the most influential interpretation along these lines, see L. Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 156-163; for a similar view, see D. Schroeder, "Aristotle on Law," *Polis* 4 (1981): 17-31. Martha Nussbaum also argues that natural right is not grounded in general rules, but she severs its direct connection to nature by grounding its judgments in "some conditions of broad reflective equilibrium." See M. Nussbaum, *Aristotle's De Motu Animalium* (Princeton, NJ: Princeton University Press, 1985), 212.

8. F. Wormuth, "Aristotle on Law," 24. See also M. Salomon, *Der Begriff der Gerechtigkeit bei Aristoteles*, 52-54.

9. So strange, indeed, that at least one translator suggests that Aristotle must have meant to say "though it is *not* easy" (*ou dēlon*) to distinguish the naturally and conventionally just things. See Aristotle, *Nicomachean Ethics*, trans. by H. Rackham (Cambridge, MA: Loeb Classical Library, 1956), 296, fn a.

10. Moreover, the difficulty of discerning the action in any particular situation which is something that supporters of this interpretation, such as Leo Strauss, strongly emphasize. See L. Strauss, *Natural Right and History*, 160-161.

11. M. Salomon, *Der Begriff der Gerechtigkeit bei Aristoteles*, 52; J. Ritter, "Naturrecht bei Aristoteles," 149.

12. I discuss Aristotle's fleeting reference to "natural law" in the *Rhetoric* in the following section of this article. The lack of examples of the conflict between natural and conventional right could simply reflect the brevity and casualness of this passage rather than support my claim that Aristotle does not think of them as two conflicting standards of adjudication. (I discuss the most prominent example of a nature/convention contrast in Aristotle's works, his inquiry into the debate about the naturalness of slavery, in the final section of this article.) But if he does so understand natural and conventional right, then his failure to illustrate his understanding is a rather glaring omission.

13. For early Greek discussions of natural and conventional right, see F. Heinemann, *Nomos und Physis* (Basel: Friedrich Reinhardt, 1965).

14. Aristotle suggests that among the gods, perhaps, justice is unchanging (*NE* 1134b26). But, as Gauthier and Jolif point out [*l'Éthique à Nicomaque*, 2 Tomes; Introduction, Traduction et Commentaires par R. A. Gauthier and J. Jolif (Louvain/Paris: Publications Universitaires, 1970), II: 394], Aristotle refers to the gods merely to contrast the immutability of divine things with the mutability of human things. Justice is, for him, a human thing. He ridicules the notion that there can be justice among the gods *NE* 1178b11).

15. For this account of the naturalness of the political community, see my article, "Community and Conflict in Aristotle's Political Philosophy," *Review of Politics* 47 (1985): 92-112.

16. In Book 2 of the *Nicomachean Ethics*, Aristotle denies that the virtues are natural capacities of human beings. They require training and moral education to develop. Human beings, however, do have by nature the capacity to provide and receive the training that promotes the development of the virtues. See *NE* 1103a14-25.

17. Unlike conventional right, which is natural in its origin—it develops naturally along with the political community—but not in its end, because judgments about conventional right do not reflect and develop the highest practical human capacities.

18. I elaborate on this implication of Aristotle's argument in "Community and Conflict in Aristotle's Political Philosophy," 102-103, 107-109.

19. R. A. Gauthier and J. Jolif, *l'Éthique à Nicomaque*, II:391.

20. E. Michelkakis, "Das Naturrecht bei Aristoteles", in E. Berneker (ed.), *Zur Griechische Rechtsgeschichte* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1968), 146. In addition to Gauthier and Jolif, others who draw similar conclusions from the *Rhetoric's* reference to natural law include W. von Leyden, *Aristotle on Justice and Equality*, 84; M. Hamburger, *Morals and Law*, 65ff.; P. Trude, *Der Begriff der Gerechtigkeit in der Aristotelischen Staatsphilosophie*, 155 n. 121.

21. M. Hamburger, *Morals and Law*, 65, 39 n. 1.

22. M. Salomon, *Der Begriff der Gerechtigkeit bei Aristoteles*, 61-62.

23. See G.E.L. Owen, "Tithenai ta phenomena," in *Logic, Science, and Dialectic: Collected Papers in Greek Philosophy* (Ithaca, NY: Cornell University Press, 1986), 239-251; and M. Nussbaum, *The Fragility of Goodness*, (Cambridge: Cambridge University Press, 1986), 240-263.

24. Aristotle tells them, interestingly enough, to stick very close to the letter of the law (*Rhetoric*, 1354b.)

25. R. A. Gauthier and J. Jolif, *l'Éthique à Nicomaque*, II:391.

26. See N. Schroeder, "Aristotle on Law," 22-23, and P. Trude, *Der Begriff der Gerechtigkeit in der Aristotelischen Staatsphilosophie*, 144.

27. For example, P. Trude, *Der Begriff der Gerechtigkeit in der Aristotelischen Staatsphilosophie*, 157; R. A. Gauthier and J. Jolif, *l'Éthique à Nicomaque*, II: 419; and E. Michelkakis, "Das Naturrecht bei Aristoteles," 155. For a critique of this interpretation, see M. Salomon, *Der Begriff der Gerechtigkeit bei Aristoteles*, 64-66.

28. R. A. Gauthier and J. Jolif, *l'Éthique à Nicomaque*, II: 432-33.; P. Trude, *Der Begriff der Gerechtigkeit*, 124-125, 129; W. Siegfried, *Der Rechtsgedanke bei Aristoteles*, 80; and W. von Leyden, *Aristotle on Justice and Equality*, 84.

29. A. Gauthier and J. Jolif, *l'Éthique à Nicomaque*, II: 432-433.

30. Recent defenses of Aristotle's authorship include F. Dirlmeier *Aristoteles—Magna Moralia* (Berlin: 1958); and J. Cooper, "The *Magna Moralia* and Aristotle's Moral Philosophy," *American Journal of Philology* 94 (1973): 327-349. For counterarguments, see D. J. Allan, "Magna Moralia and *Nicomachean Ethics*," *Journal of Hellenic Studies* 77 (1957): 7-11; and C. J. Rowe, "A Reply to John Cooper on the *Magna Moralia*," *American Journal of Philology* 96 (1975): 160-172.

31. M. Hamburger, *Morals and Laws*, 63.

32. There is no reason to conclude that the greater conventionality of the nature/convention distinction in the *Magna Moralia* provides strong evidence that it represents Aristotle's early work, as argued by Max Hamburger (*Morals and Law*, 63). The *Magna Moralia's* conception of this distinction remained closer to the general understanding of that distinction throughout the fourth century. Indeed, it remains the conventional understanding today, as can be seen by

the repeated attempts by most commentators to impose it upon the author of the *Nicomachean Ethics*. It itself provides no reason to choose a younger, more conventional Aristotle rather than a later, more conventional Aristotelian as its author.

33. This does not mean, however, that Aristotle is condemning as unjust the bulk of the Greek practice of slavery. The Greek debate about the naturalness of slavery concerned whether nature or convention justified slavery, not whether it was justifiable. Those who described slavery as contrary to nature had no trouble in justifying the practice by convention. See Y. Garlan, *Slavery in Ancient Greece* (Ithaca, NY: Cornell University Press, 1988), 126; and R. Mulgan, *Aristotle's Political Theory* (Oxford: Clarendon Press, 1977), 23-24.

34. See S. J. Gould, *The Mismeasure of Man* (New York: Norton, 1981), 322-323; and "Human Equality is a Contingent Fact of History," in *The Flamingo's Smile* (New York: Norton, 1985), 185-198, 197-198.

35. I shall present a full explication and defense of this interpretation of Aristotle's understanding of justice in *The Problems of a Political Animal*, a book on Aristotelian political thought that I am currently preparing for publication.

36. Among contemporary writers, see J. Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 10-11; D. Miller, *Social Justice* (Oxford: Clarendon Press, 1976), 17-18; and W. Galston, *Justice and the Human Good* (Chicago: University of Chicago Press, 1980), 100. Rare exceptions among contemporary writers include J. R. Lucas, *On Justice* (Oxford: Clarendon Press, 1980), 6; and F. Hayek, *Law, Legislation, and Liberty*, 3 Vols. (Chicago: University of Chicago Press, 1982), 2: 131. See also H. Bedau, "Social Justice and Social Institutions," *Midwest Studies in Philosophy* 3 (1980): 151-176, 159; and D. L. Philips, *Equality, Justice, and Rectification* (London: Academic Press, 1979), 75ff., for perceptive discussions of debates about how to define justice.

37. As noted above, I have no space here to elaborate upon or defend this interpretation of Aristotle's understanding of justice. I would like to note, however, that I am not suggesting that Aristotle, like Hayek, rejects descriptions of states of affairs as just or unjust as a "category mistake" (F. Hayek, *Law, Legislation, and Liberty*, 2: 31). Even though justice refers for Aristotle primarily to a moral virtue—that is, to a characteristic of individuals—he is quite willing to use it in a secondary sense to describe states of affairs that just individuals seek to establish.

38. See *NE*, 1130a17-30, for a discussion of the grasping individual (*pleonektes*).

39. R. Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977), 49, 100.

40. Moreover, Aristotle is not suggesting here that law *should be*, but usually is not, an image of what is naturally just. If this were his meaning, then it would make no sense to denounce the claim as "worse than metaphor." For if this were his meaning, the metaphor would be quite accurate with regard to well-framed laws, if not with regard to all laws. Aristotle would then merely have to qualify the statement to make it useful. Instead, Aristotle uses the statement to illustrate a kind of misrepresentation that goes beyond that found in a bad or unqualified metaphor.

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