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THE GROUNDING OF EFFECTIVE ARISTOTELIAN LAW

A Thesis
presented in partial fulfillment requirements
for the degree of Master of Arts
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by

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ABSTRACT

This paper aims to contribute meaningfully to Aristotelian scholarship by articulating the grounding of effective law. The grounding of law is the reason for which law's efficacy can be explained. Two popular contenders for this explanation are natural law theory and legal positivism; however, this paper will build off the work of Donald Schroeder to show that neither theory is a tenable explanation for the grounding of Aristotelian law. Although Schroeder rejects natural law and positivism as appropriate interpretations of Aristotle, he fails to articulate what ultimately is the grounding of efficacious law. The final section of this paper will aim to show that the proper grounding of Aristotelian law is found in the virtue of the law-makers.

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I. INTRODUCTION

When we consider the many relationships found in any political community, one of the most fundamental is the relationship between citizens and the laws which govern them. Aristotle took special notice of this particular relationship and built a sophisticated account of law into his political theory. This paper will contribute to Aristotelian scholarship by searching for the proper ground of effective law.¹ I will be building on Donald Schroeder's interpretation that Aristotle is neither a natural law theorist nor a positivist in order to show that the proper grounding for effective laws is virtue of a particular kind, something Schroeder fails to articulate himself.

First, we will determine exactly what Aristotle means by law so that we may frame our discussion. Second, we will make explicit what it is we are searching for in this paper and what a successful hunt would accomplish. Third, we will consider a natural law grounding of law and reject its applicability. Fourth, we will consider a positive grounding of law and ultimately reject it as well. Fifth, we will turn to Schroeder's argument directly and examine how his account does not successfully provide the grounding. We will then show that the grounding of law is the virtue of law-makers and thereby conclude the hunt.

¹ This paper has no intentions on speaking on the nature of law *as it is*, but merely has ambitions within the scope of Aristotelian scholarship. For this reason, the law spoken of will be an Aristotelian conception of law, but to specify this at every mention of 'law' would be tedious.

II. WHAT IS ARISTOTELIAN LAW?

Before we begin our hunt for the grounding of Aristotelian law, we should first sketch a general understanding of what Aristotle means by ‘law’. The contemporary conception is not totally at odds with the ancient conception, but it is far safer to distrust our intuitions here so we have the clearest picture possible.

First, it is prudent to note that there is a more general contrast between laws and decrees. A law has a general scope and “it applies not only to cases at hand but to a general category of cases that can be expected to occur in the future.”² A decree “is a legal enactment addressed solely to present circumstances, and sets no precedent that applies to similar cases in the future.”³ We will not be addressing the nature of decrees in this paper, though Aristotle does account for this distinction within legislation in his theory.

There are six types of law in Aristotle’s writings, three paired sets of distinctions. These distinctions were first articulated by Schroeder, but I will be using my own terminology.⁴ The six types are: inherited or enacted; written or unwritten; and single-city or multi-city. When Aristotle speaks of law, he some combination of these in mind.

The first set of distinctions is between laws which are inherited or enacted. Inherited laws are the customs, traditions, and habits of a community. These would include such things as

² Richard Kraut, *Aristotle: Political Philosophy* (Oxford: Oxford University Press, 2002) 106.

³ *Ibid.*, 106.

⁴ Donald Schroeder, “Aristotle on Law,” *Polis* 4 (1981): 19.

respecting elders, prohibiting incest and murder, and other long-held prescriptions of behavior. Enacted laws are those “based on the habitual acceptance of established political authority.”⁵ A city can hardly run off the inherited laws alone, so enacted laws serve to bring the necessary charge to or fill the gaps of the inherited law system. An example of an enacted law is the prohibition of slavery.

The second distinction is between written and unwritten laws. Written laws are those which have a written record of their existence, whereas unwritten laws are not written down but are still explicitly known by members of the political community. Written laws can also be inherited laws whose record has been lost or forgotten. Unwritten laws can be enacted laws from a long time before. An example of written laws would be Hammurabi’s Code or the specific prescribed punishment for murder. Unwritten laws could be a customary habit such as shaking a person’s hand when you meet them or not committing adultery.

The final distinction concerns the scope or range of influence laws possess. Single-city laws are typically written and are the particular laws to one polis. An example would be specific holidays or festivals of a community. Multi-city laws are laws that exist in more cities than one, such as always burying the dead or paying taxes. Within these three distinctions, any law can be sorted appropriately. These distinctions are not only helpful in clarifying any contemporary intuitions that we are bringing into Aristotle, but they are also evidence to the thoroughness of Aristotle’s theory. As we set off on our hunt for the grounding of these law types, it will do well to remember that Aristotle is trying to make an account of how law *is* just as much as an account of how law *should be*.

⁵ Ibid., 21.

III. ATTRIBUTES OF EFFECTIVE LAWS

Not only are there different law types in Aristotle's theory, but he also claims that some laws are better than others.⁶ The best laws will possess certain attributes which distinguish them from other, lesser laws. Aristotle has specific attributes in mind when he makes that claim and articulates them. Ultimately, laws are to serve the constitution. It is their purpose and birthright:

For laws should be established, and all do establish them, to suit the constitution and not the constitution to suit the laws. For a constitution is the organization of offices in city-states, the way they are distributed, and what element is in authority in the constitution, and what the end is of each of the communities. Laws, apart from those that reveal what the constitution is, are those by which the officials must rule, and must guard against those who transgress them.⁷

Laws will also shape the attitudes and habits of the citizens to favor the values of the constitution:

For the law has no power to secure obedience except habit; but habits can only be developed over a long period of time. Hence casual change from existing laws to new and different ones weakens the power of law itself.⁸

These passages are the most explicit guides to understanding the standard by which Aristotle makes his normative distinction.

From these passages, and others like it, we can articulate three necessary attributes of the best laws. These attributes are:

⁶ *EN* X.9 1181a15-20

⁷ *Pol.* IV. 1 1289a11-25

⁸ *Pol.* II.9 1269a20

A1: The best laws will serve the constitution.

A2: The best laws will habituate the citizens.

A3: The best laws will remain stable over time.

When all three attributes are met, we may call these laws the most effective as they are performing their function best. It is by how well laws realize these attributes that they can be called better or worse.

We have seen what attributes effective laws possess, and that Aristotle believes there to be a normative distinction between laws, but we have not yet found the grounding of such laws. The attributes listed above give us the means by which we judge laws, but they do not in and of themselves explain why it is that some laws better fulfil them than others. The proper grounding, and the target of this paper, is:

G1: The source of law's efficacy.

There is a reason why some laws better fulfill **A1-3** than others and **G1** is how we can explain why this is so. This is where Aristotle becomes less clear, but there is still an answer to be found. We simply must look for it.

The following sections will be a hunt for the proper grounding of effective law. We will first look to two common suggestions for the grounding of Aristotelian law: natural law and positivism. After showing how these two are not the proper ground for law, we will look to Schroeder's article. Although he is on the right path, he does not sufficiently provide an account of **G1**. I will show that the proper grounding of Aristotelian law is the virtue of the law-maker(s).

IV. NATURAL LAW IS NOT THE GROUND

A common theory to look to in order to explain **G1** in Aristotelian scholarship is natural law theory. To look to this theory is not a ridiculous proposition; however, we will see that Aristotle is not a natural law theorist.

A. What is natural law?

Natural law has had many formulations, but there are four general features to a traditional natural theory of law that all formulations share. Those features are:

NL1: Reason enables people to discover pre-existing rules or laws for action.

NL2: Once such a rule or law is recognized there is an obligation to follow it.

NL3: If any human law violates a pre-existing natural law, there is no moral obligation to follow it.

NL4: It is compatible with the sociological aspects of law, i.e. social powers and structures that enforce the law.

When a theory of law meets **NL1-4** we can accurately say that the law is grounded in natural law. If any of these features are not met by a theory then we cannot properly say it is a theory of natural law. There are some who interpret Aristotle as a natural law theorist, so we will look to see if such an interpretation is a viable account of **G1**.

B. *Is Aristotle compatible with natural law?*

One proponent of interpreting Aristotle as a natural law theorist is Ernest Barker.⁹ He argues “that since man fulfills his nature by living virtuously, law is natural because it embodies and encourages the life of virtue.”¹⁰ He believes that Aristotle is compatible with **NL1-4**.

NL1: Pre-existence. Barker thinks laws are fundamentally moral for Aristotle. Since laws have a relationship with moral cultivation, he thinks their nature cannot be conventional.¹¹ Their foundations are “identical with the eternal and immutable laws of morality.”¹² The laws of nature can be found the same everywhere, but we may find variability among the city-states nonetheless. This is because “it is possible... that a State may pervert, rather than interpret, the principles of natural law.”¹³ Barker maintains though, that the laws themselves remain perfectly intact and it is mismanagement by human minds that bring inconsistency to cities.

NL2 and NL3: Obligation. Barker makes an identity claim – that a law is only a law if it is *identical* to the laws of morality. A good constitution and its laws ought to be followed because “they correspond to the law of Nature which is the same as the moral law.”¹⁴ And “every moral obligation is enacted in the law.”¹⁵ In the same spirit, in every bad constitution “the laws

⁹ Ernest Barker, *The Political Thought of Plato and Aristotle* (Dover, 1958). For his account see Chapter 8.

¹⁰ Schroeder, “Law,” 23.

¹¹ We will explore this claim in the following section when addressing positivism.

¹² Barker, *Thought*, 326.

¹³ *Ibid.*, 328.

¹⁴ *Ibid.*, 328.

¹⁵ *Ibid.*, 322.

are unjust, and therefore unnatural and unmoral” thereby removing all obligation to follow such laws.¹⁶

NL4: *Compatibility.* On Barker’s interpretation, Aristotle has made a distinction between natural law and convention:

Natural law has everywhere the same validity, and does not depend upon enactment for that validity: it deals with the eternal and universal duties of law. Positive law varies from State to State, according to the enactments which each State makes; it determines a particular rule as henceforth alone admissible, in a case where, before the enactment, any line of action was possible.¹⁷

It is possible for convention, or what Barker calls positive law, to reasonably differ among city-states. These rules do not carry the moral weight of their natural law counter parts. This distinction, however, allows for variability and alignment with structures that make up the many distinct societies.

Barker’s interpretation of Aristotle does seem to align him with natural law theories; however, Barker’s interpretation is not a complete representation of Aristotle’s ideas of law. We will now look to see if there is anything Aristotle says that would challenge Barker’s interpretation of him as someone who is a natural law theorist.

C. Natural law is ultimately incompatible with Aristotle

It is not unreasonable that Barker and others have interpreted Aristotle as a natural law theorist. In the *Nicomachean Ethics*, Aristotle posits a conception of justice that is, in part, natural.¹⁸ However, he is ultimately not a natural law theorist.

¹⁶ Ibid., 328.

¹⁷ Ibid., 327.

¹⁸ *EN V.7*

NL1: *Pre-existence.* Barker's conception of natural law seems to suggest an existing body of laws. Nowhere does Aristotle commit himself to such a view.¹⁹ Aristotle is very clear that it is the law-makers and legislators who make and amend laws. Political science training is so important because it allows for legislators to make the very best laws.²⁰

NL2: *Prescriptive Obligation.* We also come into the problem of "how principles of action discovered by reason can also have the binding force of laws..."²¹ Principles of actions discovered by reasons would be conditional statements: 'If you want to fulfill your nature as a political animal, you must do these things...' Nowhere in a conditional statement is there a command. A natural law type of obligation simply does not exist in Aristotle.

NL3: *No Obligation.* We will see how Aristotle fails to fulfill this feature of natural law more clearly later; however, it will suffice to say here that Aristotle believes that there are reasons for following 'bad' laws. This will be fleshed out more fully in Section V of this paper.

NL4: *Compatibility.* Although natural law theory is compatible with the more sociological aspects of law, Aristotle's customary, unwritten, and multi-city laws do not save a natural law interpretation. There is no prescribed moral obligation to follow any of these laws. They develop and survive through time because they work.

We can then conclude that Barker's natural law interpretation of Aristotle is not compatible with Aristotle's actual ideas. Although Aristotle's theory of law's efficacy is not grounded in a natural law theory, he is a far cry from a positivist, as we will come to see in the next section.

¹⁹ Schroeder, "Law," 23-25.

²⁰ *Pol.* VI. 5 1319b32-40; *Pol.* III.16 1287a25-28; *Pol.* VII.2 1325a6-9.

²¹ Schroeder, "Law," 25.

V. POSITIVISM IS NOT THE GROUND

Another potential candidate for **G1** is mere social convention. When natural law is rejected, often the place to turn is a positive law theory. The major feature of positivist law theories is:

P1: The existence and content of a law depends on social facts, not the law's merit.

The positivist interpretation may seem a tempting alternative to natural law, especially when considering **A2** as well as our discussion above on obligations. We shall see that despite Aristotle's emphasis on the sociological aspects of law, effective law is grounded in something other than mere convention.

A. *Belief*

There are inevitably some social aspects of law, all of which Aristotle takes into consideration. First among them, he knows there is no such thing as a law no one believes.²² Even the etymology of 'nomos' suggests that a law is "something believed in or generally held to be right" and that an "acting subject is presupposed."²³ Without belief in a law, it has no influence over citizens: "As things stand, however, if some misfortune occurs and the multitude

²² Kraut, *Political*, 105.

²³ Schroeder, 18. "The Greek term often translated as 'law,' *nomos*, is related etymologically to *nomizein* (to believe) and *nemein* (to apportion or distribute). This suggests, first, that *nomos* is something believed in or generally held to be right. Regarding its relationship to *nemein*, for something to be apportioned, there must be an apportioner. An acting subject (or subjects) is presupposed; that is, some agency is required to make something a law" (Ibid.).

of those who are ruled revolt, the laws provide no remedy for restoring peace.”²⁴ Once laws of a political community are abandoned, there is no government in the world that could reestablish order and authority through legal means alone. Obedience to law comes from the belief that the law is binding. Belief in a law’s authority is necessary by those who are under it, but this is not a sufficient condition of the efficacy of law. We still need to understand what grounds this belief. Aristotle thinks part of the answer is found in habit, which we turn to next.

B. Habit

1. Stable constitutions and habit

Looking back to §II of this paper and **A2**, we know that an attribute of effective law is its ability to habituate citizens. Aristotle has a comprehensive picture of this process and what constitutes a habit. It is the process by which people may become virtuous: “Hence the virtues come about in us neither by nature nor against nature, rather we are naturally receptive of them and are brought to completion through habit.”²⁵ Habit plays such a crucial role in Aristotle’s conception of the virtuous person because it is through habit that one becomes *completely* virtuous. Once virtuous action becomes a habitual action, then the virtue is fully realized.²⁶ Someone who must fight their nature in order to perform virtuously is less virtuous as their cultivation is not yet complete.²⁷

²⁴ *Pol.* II.11 1273b24. See also *Pol.* IV.8 1294a4-9.

²⁵ *EN* II.1 1103a24

²⁶ Virtue is not limited to action. However, for simplicity of demonstration, I have decided to focus on it here. Character states and feelings are also subject to habit.

²⁷ Aristotle gives an account of such a person. Before his famous account of the incontinent person, Aristotle touches briefly on the continent person. This person lacks the will to do what she rationally knows to be the right/virtuous action usually because she is persuaded to follow her appetites. Her virtuous actions remain inconsistent and have not become habituated

Since Aristotle recognizes that habits of virtue are not an innate quality of any human, it becomes an issue that law-makers must confront directly.

What happens in cities also testifies to this, since legislators make citizens good by habituating them; that is to say, this is the *wish* of every legislator, and those legislators who do not do it well fail in their purpose, and it is in this respect that one constitution differs from another, a good one from a base one.²⁸

Legislators have an important task on Aristotle's model – they must make sure that the laws they produce form good habits. They are only able to successfully do this if the constitution and the laws that serve it remain stable over time, which would fulfill **A3**. The stability allows for the time necessary for habits to form, since habits do not spring up overnight. Long periods of time are necessary for any meaningful cultivation. A final note is that legislators are not tasked with a one-size-fits-all legal project. Each type of constitution requires different compliance from its citizens, thereby producing different articulations of laws and different habits.

But of all the ways that are mentioned to make a constitution last, the most important one, is for citizens to be educated in a way that best suits their constitutions. For the most beneficial laws, even when ratified by all who are engaged in politics, are of no use if people are not habituated and educated in accord with the constitution...²⁹

Aristotle saw the role of the law-maker as the origin of habit and it was their specific role to habituate the citizens in such a way that would support the constitution.

It is important to note here that if this Belief + Habit equation was a sufficient explanation of law's efficacy, we would be very close to a positivist understanding of **G1**.

However, Aristotle makes another distinction that merits consideration as it presents a problem

into her character yet. There is still hope for her since she may yet be persuaded to act according to virtue, but she is not perfectly or completely virtuous just because she has knowledge of what the virtuous action would be. For Aristotle's account of the continent person see *EN VII*.

²⁸ *EN II.1* 1103b4

²⁹ *Pol. V.9* 1310a12-15

for a positivist understanding of Aristotelian law. This distinction is between good and bad habits:

That is why the activities must exhibit a certain quality, since the states follow along in accord with the differences between these. So it makes no small difference whether people are habituated in one way or in another way straight from childhood; on the contrary, it makes a huge one – or rather, *all* the difference.³⁰

Habit *qua* habit is not enough for maximally effective law – there is a significant normative distinction between types of habits. We turn next to flesh out this difference.

2. Good habits v. bad habits

There is the possibility of pushback here at this distinction, but I hope to show that the pushback is ultimately misguided. A critic might say that a bad habit is no different *really* since even Aristotle thought there was some virtue in following bad laws. Aristotle does say that by the nature of an action being lawful, it maintains some just quality:

...it is clear that all lawful things are somehow just, since the things defined by legislative science are lawful and each of these, we say, is just. The laws, for their part, pronounce about all matters, aiming either at the common advantage of all or at that of the best people or of those who... are in control.³¹

However, Aristotle does not mean by this that all laws are *completely* just. He is not endorsing an idea that the justness of law come from the mere fact that it was crafted by legislators. Bad laws are simply contingently just – they lack the necessary virtue to be perfectly, completely just.

Since habituation and virtue are so closely tied in Aristotle's theories, it is obvious that he would bring this connection in any discussions about law, as law is literally habit-forming. There is nothing in and of itself that prevents laws from developing bad habits in citizens, "[for] it is

³⁰ *EN* II.1 1103b22-24

³¹ *EN* V.1 1129b10-16

possible for someone's reason to have missed the best supposition and for him to be led similarly astray by his habits."³² Even if a particular law is a bad law, and inculcates a bad habit, is it still valuable to the extent that it contributes to the overall system of law and authority.³³ This admission is in no way a complete endorsement of the complete justness all law. Aristotle simply is making room for legitimate legal systems that fail to meet his own model. Such legal systems are just qualifiedly so: they are just inasmuch as they successfully contribute to the society's stability. In this respect only may we consider them as just.

This acknowledgement is in no way meant to show that our discussion of law is over. In fact, it is here that we see positivism's failure to meet **G1**. Bad laws that produce habits are only valuable *to a degree*. Not all laws are created equal on Aristotle's model. Better laws will produce better habits, making citizens better. The better the law and subsequent habit, the more valuable it is to the constitution. A law that barely fulfills **A1** is still better than no law at all, but Aristotle maintains that there are ways to do better. It is not the case that every bad law will fail to meet **A1-3**, but a law that is able to fulfill **A1-3** and fulfill such conditions *well* will be the best law.

Laws and habits based solely on **P1** have no meaningful standard by which to hold themselves accountable. There is no guarantee that any of the laws created will fulfill **A1-3 well**, let alone that they will fulfill any at all on a purely positive grounding of law. A contemporary legal example that may help further illustrate this possibility, that laws could not fulfill **A1-3**, is American administrative law:

³² *Pol.* BII.15 1334b10

³³ Kraut, *Political*, 111-118.

A1 is not fulfilled: They do not serve the constitution because oft times it operates outside the traditional bounds of the federal system.

A2 is not fulfilled: They do not habituate the citizens because laws are posted en masse on the Federal Reserve and the typical American has no chance of being able to absorb the totality of what is published.

A3 is not fulfilled: They do not remain stable through time because administrations have no power to make it so on their own, but must rely on judicial deference for any sense of permanency.

Although American administrative law fails to meet **A1-3**, no one could reasonably say that these ‘laws’ fail to exist or exert no influence over American society. However, on Aristotle’s model they would not be laws at all. They would be something very different.

C. Positivism ultimately is not the grounding of Aristotelian law

Our consideration of habits has shown that there is still something to be accounted for in a purely positivist account of law. There is something beyond **P1** that explains why certain laws fulfill **A1-3** better than others. Convention is not helpful in understanding the degree problem, so we must look somewhere else. In this final section of the paper, we will see that virtue explains why some laws are better suited to fulfill **A1-3** where positivism could not explain it.

VII. FINDING THE GROUND

As we found no answer to **G1** in natural law or positivism, our hunt must continue a little further. We turn next to Schroeder, who also rejected interpretations of Aristotle that were of a natural law or positive persuasion. I will begin by articulating what is shared between our ideas. Schroeder and I are in agreement that the “function or purpose of law is in the good of the members of the polis,” which is to say happiness.³⁴ In order for laws to accomplish this, they must “inculcate an encourage virtue in the polis.”³⁵ Schroeder says that law has two tools to encourage virtue: compulsion and education. Effective laws will make people perform virtuously even if their internal states do not align. If they are raised under such laws, then they are more apt to be virtuous since they have been habituated and then they are given reasons for their habits later.

Schroeder’s emphasis is on the consequences of effective law – proper force and habituation will make the citizens behave virtuously. Schroeder does not fulfill **G1** because he does not name the source from which these laws produce their efficacy. The closest he comes to this is by saying that when laws are in line with natural justice then they will produce ‘good’ habits.³⁶ Schroeder does not say that their efficacy depends on their alignment with natural

³⁴ Schroeder, “Law,” 26. Aristotle’s conception of happiness is a much richer conception than the English word suggests. Simply put, it is “some activity of the soul in accord with complete virtue” over a complete life (*EN* I.13 1102a4).

³⁵ *Ibid.*, 26.

³⁶ *Ibid.*, 24.

justice. **G1** remains unexplained. My contribution comes in here: instead of judging a law's efficacy by its consequences, I want to show that Aristotelian law derives its efficacy from grounding itself in virtue. The effects such laws produce are secondary to its grounding.

Schroeder says the law is efficacious if the law produces certain sorts of behavior and inculcates habits in line with natural justice. I say a law grounded in virtue cannot help but produce such behavior and habits. My focus is on the original virtuous internal state, whereas Schroeder is looking at action-consequences. Without grounding law in virtue you could conceivably have 'virtuous' behavior with non-virtuous roots. If this disparity were to happen, stability would be threatened, thereby harming **A3**.

To motivate the distinction I am making here, and its importance in this discussion, I think an example would be useful. I will use the tale of the Hypocritical King. Imagine an all-powerful tyrant who makes all his community's laws. This tyrant is not a virtuous man, but would prefer his subjects to act as such. So, he decides to make all his laws produce virtuous habits within his subjects. I see two important possible consequences here that would threaten **A3**. First, once his subjects caught onto the true nature of their leader's character they would likely revolt against him and instill a leader that better aligned with their own natures. Or second, even if his subjects did not catch onto his character, or decided they did not care, a vicious ruler would not have the practical wisdom necessary to continue making virtue-producing laws indefinitely. Eventually he would slip up and make a bad law that would negatively affect the stability of the political community.

Schroeder's account is insufficient because it focuses only of the consequences of laws and not their source. The laws must produce virtuous habits. Virtue is the grounding, but it is the virtue housed in the active mind of a legislator, not an inaccessible form or standard. "For the

starting points of things doable in action are the end for which the things doable in action are done.”³⁷ We want laws that result in virtuous habituation (their end), so from a virtuous state they must spring.

A. The ground and the constitution

My claim that the grounding of efficacious law is in a virtuous law-maker may not seem intuitive at first glance, but this sociological answer will hopefully prove more attractive after these final sections. In order to show the role that virtue plays in law, we will look at two hypothetical cities that Aristotle himself gives for consideration. The first is a city with no virtue and the second is a city with perfect virtue. Before we turn to these illustrative cases, a little conceptual background is necessary.

The way in which Aristotle conceives of a constitution is very different from the contemporary conception. For Aristotle, the constitution of a polis is not a social contract between the rulers and the ruled or any other such document. The constitution is the *rulers themselves*.

A constitution is an organization of a city-state’s various offices but, particularly, of the one that has authority over everything. For the governing class has the authority in every city-state, and the governing class is the constitution.³⁸

This clarification of meaning is especially important in understanding what Aristotle means by **A1**. When laws serve the constitution, they are serving the governing class or those who rule the city-state. If effective laws are to fulfill **A1 and A2** so as to **A3**, the only possible means of achieving this is to ground law in virtuous law-makers. Aristotle had very definite ideas of the

³⁷ *EN* VI.5 1140b16

³⁸ *Pol.* III.6 1278b10

role virtue held in various constitutions. By looking at his two opposing cities, we can further examine Aristotle's ideas and conclude our hunt for law's grounding.

B. Portrait of a city with no virtue

The first city we will explore is the city with no virtue. Tyrannies are the least virtuous of any of the possible constitutions.³⁹ Aristotle also states that extreme democracies and extreme oligarchies are also without virtue. In fact, Aristotle goes as far to say that there are no laws in an extreme democracy, since popular whim and decrees rule instead of laws.⁴⁰ For our purposes here, we will be focusing on the viciousness of the tyrannical constitution as Aristotle gives the most complete picture of such a constitution and the reasons for its failing.

There are some qualities of tyrannical city-states that Aristotle sees as necessary consequences from its nature such as it is. Tyrannical constitutions are short lived.⁴¹ Tyrannies often persecute virtuous people and institutions to hold onto power, and those types of actions are often the cause of tyrannies short existence. The tyrant's rule will be longer if he appears virtuous, since those ruled by him will cooperate more often instead of working to undermine or replace him.⁴² These qualities are inevitable based on the foundational issue with all tyrannies: the city is vicious at its foundation. It is clear to Aristotle that all tyrannies lack virtue and justice because "virtue certainly does not ruin what has it, nor is justice something capable of destroying

³⁹ *EN* VIII.10 1160b8

⁴⁰ *Pol.* IV.51292a30-35

⁴¹ *Pol.* V.12 1315b39

⁴² *Pol.* V.12

a city-state.”⁴³ The tyranny is doomed to fail every time because it is a city with no virtue; its particular failings are evidence of that quality.

The laws of a tyranny may serve the constitution for a time (A1), but these constitutions are incapable of lasting, thereby failing to fulfill A3. The stability of the constitution is threatened through its inability to produce the laws necessary to inculcate good habits. Before analyzing what Aristotle hoped to show with this portrait, we will next turn the perfectly virtuous city.

C. Portrait of a city with perfect virtue

Aristotle not only gives his readers a portrait of vicious city, but also gives an account of a city with perfect virtue. The best form of a constitution is an aristocracy “that consists of those who are unqualifiedly best as regards to virtue.”⁴⁴ These would be people who were completely virtuous and all that such a state entails. The ultimate goal for all city-states is happiness, so those who are best equipped to achieve it in their own lives would be best equipped to achieve it for the city through their rule. Aristotle acknowledged that achieving perfect happiness was extremely difficult, perhaps unachievably so, but he did leave open the possibility. However unlikely, “... it is possible for even a single city-state to be happy all by itself, provided it is well governed, since it is possible for a city-state to be settled somewhere by itself and to employ excellent laws.”⁴⁵ The aristocratic constitution stands the best chance of achieving happiness through employing excellent laws. Aristotle seems to think this because the rulers of an aristocratic constitution possess the necessary virtue to govern well.

⁴³ *Pol.* III.10 1281a21

⁴⁴ *Pol.* IV.7 1293b4

⁴⁵ *Pol.* VII.2 1325a1

D. What these portraits reveal about the grounding of effective law

The failure of the tyranny and the success of the aristocracy both stem from each city's sociological foundations. Tyrannies are constitutions without any virtue, thereby the laws of such a community would be grounded in nothing other than the vicious ambitions of the tyrant. Aristocracies, on the other hand, are the pinnacle of virtue (as far as constitutions are concerned). The laws created in such a constitution would be grounded in the virtue of their rulers:

A1: The laws would serve the virtuous ruling group, as they are all working towards happiness.

A2: The habits formed serving the constitutions would be good habits that cultivate virtue among the citizens, as articulated by Schroeder.

A3: The laws would remain stable because of the success of **A2** and the greater chance of their perceived validity, thereby positively affecting the strength of the citizens' belief.

Here our hunt ends. When virtue is possessed by the ruling class and is the defining trait of the constitution, laws will possess **A1-3** and do so *well*. This allows us to say with confidence that the grounding of effective law is the virtue of the law-makers.

VII. CONCLUSION

We have now seen that the grounding for Aristotle's effective law is not found in natural or positivist law theories, but instead in the virtue of law-makers. We first laid out Aristotle's meaning of 'law' and laid out the relevant attributes that any effective law would possess (**A1-3**). We then were able to begin our hunt for **G1**. After rejecting natural law and positivism as potential answers, we found our answer by analyzing two city-state examples given by Aristotle. While this paper is focused on the specific contribution to Aristotelian scholarship, this idea may also be of interest to philosophy of law as it is a third consideration in the ongoing debate between positivist and natural law theories.

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