

Mi-Kyoung Lee, “What Aristotle Learned from Plato about Justice and Laws”, *Polis* 38 (2021) 535-556.

Abstract: In this paper I consider Aristotle’s solutions to two questions about justice and the laws: why think that obeying the law is just? And why think that doing what is just will promote one’s happiness? I analyze Aristotle’s solutions to these two problems in terms of four claims concerning the laws that come from Plato and underwrite Aristotle’s optimism about the potential for *politikê epistêmê* to issue in laws which are objectively correct.

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Aristotle

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§1. Introduction

Readers of Aristotle have always noted the debt he owes to Plato’s political philosophy on the topic of laws and legislation. Barker in his 1918 *Greek Political Theory* lists in a two-page

appendix parallels between Aristotle's *Politics* and the *Laws*.¹ Bodéüs and others point out the 'profound' influence of Plato's *Laws* on Aristotle's understanding of moral psychology, habituation, and moral education.² Understanding the nature of this debt — both the ways that

¹ E. Barker, *Greek Political Theory: Plato and His Predecessors*, revised (London: Methuen, 1960), pp. 443-444.

² R. Bodéüs, *The Political Dimensions of Aristotle's Ethics*, trans. Jan Edward Garrett (Albany, NY: State University of New York Press, 1993) [orig. *Le Philosophe et la Cité* 1982], pp. 48-49; see also discussions of Plato's influence on Aristotle in W.L. Newman (ed.), *The Politics of Aristotle: With an Introduction, Two Prefatory Essays and Notes Critical and Explanatory* (Oxford: Clarendon Press, 1887), pp. 1.158-189, 309-311, 398-457, 3.xxxvii, 478-479; J. Burnet, *Aristotle on Education: Being Extracts from the Ethics and Politics* (Cambridge: Cambridge University Press, 1903), pp. 129-130; and more recently in A.W. Saxonhouse, *Fear of Diversity: The Birth of Political Science in Ancient Greek Thought* (Chicago, IL: University of Chicago Press, 1992), chapters 8 and 9; Aristotle, *Politics Books VII and VIII*, trans. Richard Kraut (Oxford : New York: Oxford University Press, 1997), p. 139; D.B. Nagle, *The Household as the Foundation of Aristotle's Polis* (New York: Cambridge University Press, 2006), p. 203; Z. Hitz, 'Plato on the Sovereignty of Law', in R. Balot (ed.), *The Blackwell Companion to Greek and Roman Political Thought* (Malden, MA: Wiley-Blackwell, 2009), pp. 367–81; J. Annas, 'Virtue and Law in Plato', in C. Bobonich (ed.), *Plato's Laws: A Critical Guide* (Cambridge, UK; New York: Cambridge University Press, 2010), pp. 71–91; J. Annas, *Virtue and Law in Plato and Beyond* (Oxford : New York: Oxford University Press, 2017), pp. 162-168. The question of Platonic influence is of course an important part of Jaeger's hypothesis concerning Aristotle's

Aristotle follows in Plato's footsteps, and the ways he innovates upon or rejects what Plato does — is an important and interesting question, but goes beyond the limited scope of this paper.³

development, according to which the *Politics* combines material from earlier and later periods in Aristotle's development; the study of utopias in Books II, III, VII, and VIII belongs to the earlier period when Aristotle was more under the influence of Plato, whereas Books IV-VI are more empirical and show a rejection of Plato (W. Jaeger, *Aristotle: Fundamentals of the History of His Development*, trans. R. Robinson, 2nd ed. (Oxford: Clarendon Press, 1948), chapter 10. For criticisms of Jaeger, see, e.g., P. Pellegrin, 'On the "Platonic" Part of Aristotle's Politics', in W.R. Wians (ed.), *Aristotle's Philosophical Development: Problems and Prospects* (Lanham, Md: Rowman & Littlefield Publishers, 1996), pp. 347–59; R. Kraut, *Aristotle: Political Philosophy* (New York: Oxford University Press, 2002), pp. 182-7.

³ On the question of how Aristotle follows in Plato's footsteps, I have found particularly helpful: G. Striker, 'Origins of the Concept of Natural Law', *Proceedings of the Boston Area Colloquium in Ancient Philosophy* 2/1 (1986), pp. 79–94 (reprinted in her *Essays on Hellenistic Epistemology and Ethics* (Cambridge: Cambridge University Press, 1996), pp. 209-220); D. Vlahovic, *The Sovereignty of the Lawcode in Aristotle*, PhD Thesis (McGill University, 2002), S. Menn, 'On Plato's *Politeia*', *Proceedings of the Boston Area Colloquium of Ancient Philosophy* 21, no. 1 (2005), pp. 1–55; G. Striker, 'Aristotle's Ethics as Political Science', in B. Reis and S. Haffmans (eds.), *The Virtuous Life in Greek Ethics* (Cambridge: Cambridge University Press, 2006), pp. 127–41; Z. Hitz, 'Plato on the Sovereignty of Law'; M. Schofield, 'The Laws' Two Projects', in C. Bobonich (ed.), *Plato's Laws: A Critical Guide*, (Cambridge, UK; New York: Cambridge University Press, 2010), pp. 12–28, Z. Hitz, 'Aristotle on Law and Moral Education',

Here, I will examine whether Plato — and in particular his late work the *Laws* — might be helpful for understanding Aristotle’s solutions to two problems about justice and the laws. First, what reason, if any, did Aristotle have for thinking that laws are not merely tribal customs and conventions which vary from society to society, but that there is a universally valid, objective answer to the question ‘What is just?’ That is, what was his response to the problem of objectivity in the standards of right and wrong, justice and injustice in the laws? Second, why think that just action—understood as obeying the laws—not only promotes what is advantageous to others (as Thrasymachus puts it at *Resp.* 1.343c), but also promotes one’s own happiness? That is, did Aristotle think there is a congruence of justice and happiness?⁴

I argue that Aristotle’s solutions to these two problems lie in four claims which come from Plato.

(1) Aristotle assumes that there is such a thing as political science, based on knowledge of the human good; this epistemological turn provides the objective grounding for the legislative art. (2) Aristotle assumes that laws should aim at the happiness of the citizens by inculcating virtue in them. (3) Laws inculcating virtue are not just written legal statutes commanding one to cultivate virtue, or prohibiting vicious behavior; they are social, moral, and political institutions and practices that constitute ways of life organized around the common, shared good. Finally, (4) Aristotle regards law as a kind of public reason, which is an expression of divine *nous* in the

Oxford Studies in Ancient Philosophy 42 (2012), pp. 263–306, Annas, *Virtue and Law*; S.S. Meyer, ‘Plato’s Laws’, in G. Fine (ed.), *Oxford Handbook of Plato*, 2nd ed. (Oxford : New York: Oxford University Press, 2019), pp. 359–78.

⁴ Striker discusses these two problems and argues that Plato and Aristotle do not use the notion of natural law to solve either problem (‘Origins of the Concept’, p. 21).

human social order. These ideas, which come from Plato, help to explain why Aristotle is so optimistic about the potential for *politikê epistêmê* to issue in laws which are objectively correct, in some sense, obedience to which will make citizens just and virtuous.

§2. The just is the lawful

Law is at the heart of Aristotle's conception of justice. He defines one of his two types of justice, so-called 'general' justice, in terms of being 'lawful' or 'law-abiding' (*nomimos*) as opposed to 'lawless' (*anomos*) (*EN* 5.1.1129a31-b1). He thereby accepts a familiar way of thinking about just and right actions, according to which to act justly is to act lawfully. For example, Antiphon holds that 'Justice [*dikaiosynê*] is therefore not transgressing the laws [*nomima*] of the city in which one is a citizen' (P. Oxy. XI no. 1364 = Antiphon DK 87B44 fr. A). Antiphon goes on to raise a skeptical problem about the advantages and disadvantages of lawful behavior, but the slogan itself is unremarkable, and is accepted both by those like Antiphon who might recommend being unjust, and others who intend the opposite, and extol the benefits of *nomos kai dikê* 'law and justice' (Anon. Iambl., DK II 89, pp. 401.30-404.32 = Iamblichus, *Protrepticus* pp. 95-101 Pistelli; Critias/'Sisyphus' fragment, DK II 88, fr. B25, pp. 386.25-27; Gorgias, DK II 82, fr. B11a, p. 298.21-23; Pl. *Resp.* 2.359a). This probably does not amount to a definition of justice as lawfulness. It's unlikely that Antiphon, or Socrates in the *Memorabilia*, is offering an identity claim 'the just is the lawful', as opposed to the weaker claim 'lawfulness is just'.⁵ If

⁵ For an argument that the identification of the just (*to dikaion*) with the lawful (*to nomimon*) is 'characteristically Socratic', and that it 'fits appropriately in the intellectual context of the Socratic movement', see D. Morrison, 'Xenophon's Socrates on the Just and the Lawful',

Aristotle intends this as a definition, then he must face the two problems that I mentioned above. First, the problem of objectivity: since laws are variable and changeable, being a just person will also be a matter of variation and convention, of conforming to whatever the law happens to order in one's society (cf. Pl. *Tht.* 172b, *Leg.* 10.889e). And this leads to the second problem of whether there is any congruence between justice and happiness: if laws are merely conventional, or worse, they are simply the product of relations of power and domination, then there's no reason to think that being just will make one happy, or that justice is compatible with or part of a good human life (e.g., Xen. *Mem.* 4.4.12-14, Pl. *Resp.* 1.338c-339a; *Leg.* 4.714b-e).⁶

Aristotle nowhere directly replies to these questions. But given their prominence in Plato's writings, it is impossible that he was unaware of them. And indeed, they are answered implicitly when he introduces general justice in the *Nicomachean Ethics* (5.1.1129b11-19). For, from the fact that people take the lawless person to be unjust and the lawful person to be just, we can infer that 'evidently all lawful acts are in a sense just acts'.⁷ But Aristotle hedges: lawful acts are just in a sense (*pôs*) because the connection between being lawful and being just needs qualification.

Ancient Philosophy 15 (1995), pp. 329-47, but see Striker, 'Origins of the Concept', p. 216 on why this might amount to less than a definition.

⁶ Menn argues that *Laws* IV makes clear, as the *Republic* does not, that Thrasymachus is supposed to be representative of a sophistic theory of *politeia*, to which Plato suggests a strategy, first explored in the *Republic*, and then more explicitly in the *Laws* ('On Plato's *Politeia*', pp. 15-17).

⁷ Translations of the *Nicomachean Ethics* are from *The Nicomachean Ethics*, trans. W.D. Ross and L. Brown (Oxford; New York: Oxford University Press, 2009), with modifications.

Is it a necessary connection, as Gauthier and Jolif's 'justice légale' might suggest? That is, a legal act is necessarily just; a law may be badly formulated, or ill-conceived, but cannot be *adikos*. Aristotle would then be a positivist or conventionalist about law, according to whom an action is right if it is 'what the tribe ordains' or 'what is ordained by my society'.

But Aristotle does not take that route. He maintains that lawful acts are just when they are in accord not with any law, but with the lawgiver's art (*nomothetikê*). But what is *nomothetikê*?⁸

§3. Political science and the legislative art before Aristotle

The terms *nomothetikos* for the expert in legislation and his expertise *hê nomothetikê technê* or *epistêmê* first appear in Plato.⁹ In Plato's *Gorgias* it refers to an ideal type of moral and political expertise (464c, 520b); in the *Statesman*, it refers to a type of legislative wisdom whose epistemic authority is prior to that of any law code (*Plt.* 294a7). Just as *nomothetikos* is not the standard Greek word for 'legislator', for which the more common word is *nomothetês*, so too the term '*politikos*' is not the standard Greek term for 'politician', for which the more common terms

⁸ Vlahovic, *The Sovereignty*, offers a helpful study of this concept in Aristotle's political philosophy, and the role of laws in Aristotle's theory of deliberation.

⁹ *Nomothetikê* is found just 8 times in the classical period: 5 times in Plato (*Grg.* 520b3, 464b8, 464c3, 465c2; *Plt.* 294a7, along with the adjectival form *nomothetikos* in *Leg.* 657a4) and 3 times in Aristotle (*EN* 1129b13, 1141b25, *Pol.* 1332a11). *Nomothesia* and *nomothetês*, by contrast, are more generic terms for legislation and legislator in Greek, and are not Platonic – *nomothesia* is also found e.g., in Antiphon, Isocrates, Xenophon.

would be *rhetôr*, *politeuomenos*, *sumboulos*, *stratêgos*, or *rhetôr kai stratêgos*.¹⁰ The *-ikos*, *-ikê* endings signal expertise; thus, *politikos* is usually an honorific term in Plato, meaning an expert in *politikê epistêmê* or ‘statesman’. Thus, Socrates says ‘I believe that I’m one of a few Athenians ... to take up the true political craft and practice the true politics [*epicheirein têi hôs alêthôs politikêi technêi kai prattein ta politika*]’ (*Grg.* 521d-e, tr. Zeyl; see also *Grg.* 463d2, 463e4, 464b4-7). Plato then develops the notion of this ‘science’ in the *Republic*, *Laws* and above all in the *Statesman*.¹¹

But the idea of a political expertise that is exercised in expert lawmaking and statesmanship is probably not Plato’s invention. For one thing, Xenophon uses the term *politikos* in his Socratic works (e.g., *Mem.* 4.2.11), which suggests that Socrates used it before Plato (unless Xenophon is

¹⁰ *Politikos* is found in the writings of Xenophon, Plato, and Aristotle, but never in the language of law or Athenian speeches, according to M.H. Hansen, ‘The Athenian “Politicians”, 403-322 b.c.’, *Greek, Roman, and Byzantine Studies* 24/1 (1983), pp. 33–55 at p. 36; see also M.H. Hansen, *The Athenian Democracy in the Age of Demosthenes. Structure, Principle, and Ideology*, trans. J.A. Crook (Oxford: Oxford University Press 1991) at p. 270; C. J. Rowe, *Plato: Statesman* (Warminster, England: Aris & Phillips, 1995), p. 1. The adjective *politikos*, *-a*, *-on* can simply mean ‘having to do with the polis’; passages where *politikos* simply means ‘politician’ include, e.g., Pl. *Grg.* 473e6, 484e1 and Xen. *Mem.* 1.6.15. Xenophon frequently uses the phrase ‘those doing political activities’ *hoi ta politika Prattontes*, e.g., *Mem.* 3.7.1.

¹¹ See especially the study of *politikê technê* in Plato’s *Statesman* in D. El Murr, ‘Theoretical, not practical: the opening arguments of Plato’s *Politicus* (*Plt.* 258e-259d)’, in B. Bossi and T.M. Robinson (eds.), *Plato’s ‘Statesman’ revisited* (Berlin ; Boston: De Gruyter, 2018), pp. 55–72.

already reacting to Plato),¹² or that it was a sophistical term from the late 5th c. BC.¹³ Democritus calls *politikê* ‘the greatest art [*megistê technê*]’ (DK 68B157).¹⁴ Thucydides does not, to my knowledge, use the terms *politikê epistêmê* or *politikê technê*, but arguably his *History* is intended to teach one about good and bad decision-making and statesmanship—as exemplified in

¹² Xenophon’s Socratic writings probably date from fairly late in his career and hence may reflect his reactions to representations of Socrates in Plato and other authors (cf. W. Schmitz et al., ‘Xenophon’, in H. Cancik et al. (eds.), *Brill’s New Pauly*, Brill Reference Online. Web. 21 May 2021).

¹³ For a detailed study of *politikos* and other terms for expertise, see M. Lane, ‘Political Expertise and Political Office in Plato’s *Statesman*: The Statesman’s Rule (*Archein*) and the Subordinate Magistracies (*Archai*)’, in A. Havlicek, J. Jirsa, and K. Thein (eds.), *Plato’s Statesman: Proceedings of the Eighth Symposium Platonicum Pragense*, (Praha: OIKOYMENH, 2013), pp. 51–79; she notes that Plato is also the only classical source cited by *LSJ* for *dikastikê*, *rhêtoreia* and *rhêtorikê*, and one of only two classical sources for *stratêgikê*, though Plato’s contemporary Xenophon also uses *stratêgikê* (p. 55). See also her study of the figure of the legislator in Plato and Aristotle in M. Lane, ‘Lycurgus, Solon, Charondas...Figuring the Legislator in Platonic Political Thought and Its Aftermath’ (The 2019 Nicolai Rubinstein Lecture, University of London, 21 March 2019).

¹⁴ Reading Reiske’s emendation *politikên*; for discussion of ms. readings see M.J. O’Brien, *The Socratic Paradoxes and the Greek Mind* (Chapel Hill, NC: University of North Carolina Press, 1967), p. 67 n. 25.

figures such as Pericles (2.65), Themistocles (1.138, 1.93), and Antiphon (8.68).¹⁵ Among the sophists, Protagoras is particularly associated with political science: in the *Protagoras*, Plato has Protagoras lay claim to ‘political wisdom’ (*politikê sophia*, 321d4-5), ‘the art of politics’ (*politikê technê*, 322b5), and ‘political excellence’ (*politikê aretê*, 322e2-3), which he identifies with ‘the art of deliberation’ (*euboulia*, 318e5-319a2).¹⁶

As for the content of this teaching, we get hints that it was tailored to the regime or character of each city (*Tht.* 167c, 172a-b). Socrates suggests that a Protagorean philosophy of legislation would hold that what is just is simply whatever the laws of a city-state establish—here, things are just if they seem so for a city-state. But as to what is in the interest of the city, it is a matter of political wisdom to be able to discern it and to be able to persuade a city to adopt legislation that promotes its own interest (*Tht.* 167c, 179a). When Thrasymachus in Plato’s *Republic* holds that the art of ruling will legislate whatever maintains power and wealth for the ruler or ruling party

¹⁵ See O’Brien, *Socratic Paradoxes*, pp. 56-82 on the notion of *politikê* and other types of *technê* in 5th c. Greece; *politikê technê* in the Platonic dialogues is also discussed by R.K. Sprague, *Plato’s Philosopher-King: A Study of the Theoretical Background*, 1st ed. (Columbia: University of South Carolina Press, 1976). The more standard story is that Plato coined the term (e.g., Rowe, *Plato: Statesman*, p. 1).

¹⁶ Aristotle describes the sophists as claiming to teach ‘politics’ (*ta politika*, *EN* 10.9.1180b35-1181a23). On Protagorean political wisdom, see R. Barney, ‘Twenty Questions about Protagorean Wisdom’ (draft 3/2009); N. Denyer, ‘The Political Skill of Protagoras’, in V. Harte and M. Lane (eds.), *Politeia in Greek and Roman Philosophy* (Cambridge: Cambridge University Press, 2013), pp. 155–67.

(*Resp.* 1.338d-339a), he is simply putting Protagoras' ideas more crudely, and in a more sinister light: ruling parties will legislate for their own interests and institute laws that promote their own advantage.¹⁷

Plato agrees with Protagoras and Thrasymachus that there is such a thing as political expertise, but disagrees about its nature and its goals, and puts forward a radically different conception of *politikê technê* or *epistêmê* in the *Gorgias*, *Republic*, *Statesman*, and *Laws*, with features that are important for its role in answering the problem of objectivity.¹⁸ First, it is a kind of science, one which has the authority to manage other, subordinate types of expertise and science. The idea of a 'master' science was probably already in the air in the late 5th c. BC; Gorgias is cited at *Philebus* 58a7-b3 for the idea of one art commanding another, and Protagoras is described at *Sophist* 232d-e as teaching an expertise in disputation (*hê antilogikê technê*) that 'is a capacity (*dunamis*) sufficient for carrying on controversies about absolutely everything (*peri pantôn pros amphisbêtêsîn*)'; Socrates describes a 'kingly art' in Xenophon's *Memorabilia* 2.1.17, 4.2.11.¹⁹

¹⁷I owe this point to Menn, 'On Plato's *Politeia*'; see also C. Balla, 'Studying the Constitutions', in C. Moore and J. Billings (eds.), *Cambridge Companion to the Sophists* (Cambridge: Cambridge University Press, forthcoming). For a very helpful study of Thrasymachus and Plato's reaction to him, see D. El Murr, 'Platon Contre (et Avec) Thrasymaque', in B. Collette-Dučić, M.-A. Gavray, and J.-M. Narbonne (eds.), *L'Esprit Critique dans l'Antiquité. I: Critique et Licence dans la Grèce Antique* (Paris: Les Belles Lettres, 2019), pp. 343–64.

¹⁸ Cf. M. Schofield, *Plato: Political Philosophy* (Oxford: Oxford University Press, 2006), pp. 36ff.

¹⁹ On Protagoras' conception of such an art, see Barney, 'Twenty Questions'.

Politikê technê then is Plato's candidate for this master science; the term is not found in the *Republic*, but in the *Euthydemus*, *politikê* is identified with the 'kingly art', and said to be 'the cause of right action in the state...this art alone sits at the helm of the state, governing all things, ruling all things, and making all things useful' (*Euthyd.* 291b-292d, tr. Sprague). In the *Statesman*, *politikê* is compared with the expertise of an *architektôn* 'master-builder' (*Plt.* 259e–260c, 305c-e).²⁰ Second, philosophy provides the knowledge of the human good that's needed to make Platonic *politikê technê* a science. In the *Gorgias*, Socrates draws an analogy with medicine: just as the medical doctor aims at the health of the patient, so too the true political science aims at happiness of citizens (*Grg.* 464b8-c3, 520b3). Plato continues to entertain the hypothesis in dialogues such as the *Republic* and the *Statesman* that the true *politikos* is someone who possesses the science of ruling, just as the true doctor is someone who possesses the science of medicine; both have authoritative knowledge of what would benefit citizens or patients (*Resp.* 4.428c-d, 6.505b, *Plt.* 296d7-e4, 294a7).

In sum, *politikê epistêmê* is the understanding that a *politikos* possesses, and this in turn means that the *politikos* is none other than the ideal ruler and lawgiver. The actual details of legislation are something of an after-thought in the *Republic*, taking a back-seat to the more prominent role

²⁰ On the role of dialectic in Plato's conception of political science in the *Statesman*, see M.S. Lane, *Method and Politics in Plato's Statesman* (Cambridge ; New York: Cambridge University Press, 1998); Schofield, *Plato: Political Philosophy*, pp. 144 ff.; D. El Murr, 'Politics and Dialectic in Plato's *Statesman*', *Proceedings of the Boston Area Colloquium in Ancient Philosophy* 25/1 (2010), pp. 109–47; Schofield, 'The *Laws*' Two Projects'.

played by the knowledge and wisdom that will underwrite such laws (4.427a).²¹ In the *Statesman*, Plato tackles the question of the laws more explicitly – there, it is argued that there are shortcomings for any system of laws, because laws are inevitably general and communal, and hence one cannot legislate for particularities. A ship captain does not give orders in the form of written rules to his crew; rather, ‘his expertise is their law’ (*Plt.* 297a) and *if* there are laws, it is certainly up to the legislator to revise them as he sees fit (295e). Hence, rule by (wise) man is always preferable to rule by law. This is not the place to go into his argument there; it suffices

²¹ On the role of law (and its presence or absence) in the Kallipolis, see G.R. Morrow, *Plato's Cretan City: A Historical Interpretation of the Laws* (Princeton, N.J.: Princeton University Press, 1993), pp. 577-83; E. Brown, ‘Justice and Compulsion for Plato’s Philosopher–Rulers’, *Ancient Philosophy* 20/1 (2000), pp. 1–17; A. Laks, ‘The Laws’, in C.J. Rowe and M. Schofield (eds.), *The Cambridge History of Greek and Roman Political Thought* (Cambridge ; New York: Cambridge University Press, 2000), pp. 258–92, at pp. 267-8; M. Schofield, ‘Law and Absolutism in the *Republic*’, *Polis* 23/2 (2006), pp. 319–27; Annas, ‘Virtue and Law in Plato’; J. Annas, ‘Virtue and Law in the *Republic*’, in R. Patterson et al. (eds.), *Presocratics and Plato: Festschrift at Delphi in Honor of Charles Kahn : Papers Presented at the Festschrift Symposium in Honor of Charles Kahn Organized by the HYELE Institute for Comparative Studies European Cultural Center of Delphi, June 3rd-7th, 2009, Delphi, Greece* (Chicago ; Las Vegas: Parmenides Press, 2012), pp. 165–82; M. Lane, ‘Founding as Legislating: The Figure of the Lawgiver in Plato’s *Republic*’, in L. Brisson and N. Notomi (eds.), *Dialogues on Plato's Politeia. Proceedings of the IX Symposium Platonicum*, (Sankt Augustin: Akademie Verlag, 2013), pp. 104–14; Annas, *Virtue and Law in Plato and Beyond*.

for our purposes to note that, in the *Laws*, Plato turns to rule by law, but that is not because he's particularly changed his mind about the intrinsic deficiencies of law—he still thinks that under the best circumstances someone with knowledge should rule (*Leg.* 9.875d). But the problem is that one cannot hope for, much less assume, a ruler possessing the kind of political wisdom that the *Republic* and *Statesman* describe; furthermore, absolute power corrupts, given what human nature is (*Leg.* 4.713c)—a problem that Aristotle returns to in the *Politics*.

§4. Aristotle on political and legislative science

We now turn to Aristotle. Like Plato, he embraces the idea of a *politikê epistêmê*, and describes it as being the same as *phronesis* or practical wisdom, of which the 'architectonic' or 'controlling' part is *nomothetikê* (*EN* 6.8.1141b23-26).²² As we noted earlier, he thinks lawful acts are just when the laws are in accordance with *nomothetikê* (*EN* 5.1.1129b3). The Platonic background helps to explain why Aristotle is so quick to appeal to *nomothetikê* in order to explain why obeying the laws is just. But we can then ask, when Aristotle says that lawful acts are just when they are in accordance with the legislative art, is he thinking of the ideal laws that would be the product of this 'legislative science'? Does he think that a lawful act is just if and only if it is in accordance with an ideal law that the ideal legislator does or would legislate? This was the

²² On 'political science' in Aristotle, see S.G. Salkever, *Finding the Mean: Theory and Practice in Aristotelian Political Philosophy* (Princeton, N.J.: Princeton University Press, 1990), Saxonhouse, *Fear of Diversity*, chapters 8-9; Vlahovic, *Sovereignty*; Kraut, *Aristotle: Political Philosophy*: pp. 92-7; D. Brendan Nagle, *The Household as the Foundation of Aristotle's Polis* (New York: Cambridge University Press, 2006).

Kantian approach taken by the Stoics, who hold that there are natural laws that are legislated by Zeus, i.e., right reason—but Aristotle nowhere introduces a system of natural laws that are legislated by right reason.²³ Nor does he suggest that to know whether a lawful act is just one must enter into the impartial perspective of the ideal legislator and do what the ideal legislator *would* legislate. Aristotle might seem to hint at this possibility when he says that *politikê* and *phronêsis* are the same, which seems to imply that the virtuous person who necessarily has *phronêsis* will also be an expert in *politikê* and will therefore be capable of discerning what would be legislated by the ideal legislator.

But even if Aristotle thinks that the *politikos* must have virtue, and conversely that the virtuous person will in some sense be capable of legislating, he does not assume that virtue consists of acting in accordance with a set of ideal or natural laws. Rather, *politikê* allows one to evaluate actual laws on a spectrum from better to worse, such that laws may fall short of *nomothetikê* and so might be *pôs* ‘in a way’ neither *nomimon* nor *dikaion*.²⁴ This is the defining characteristic of Aristotle’s approach to *politikê*: instead of thinking that there must be a single set of ideal universal laws that govern everyone, he conceives of the project as teaching one to be capable of objectively evaluating actual laws. The *nomothetikos* must, like the expert doctor, be capable of legislating well and appropriately for different cities depending on their nature and circumstances. Aristotle thus pursues a middle way between the Protagoras of the *Theaetetus* who is represented as holding the view that each city is correct about what is just for it, on the one hand, and ideal legislation, on the other, when Aristotle says that ‘Now the laws in their enactments on all subjects aim at the common advantage either of all or of the best or of those

²³ Cf. Striker, ‘Origins of the Concept’, pp. 214-215 (in reprint).

²⁴ Cf. Kraut, *Aristotle: Political Philosophy*, pp. 111-118.

who hold power, or something of the sort; so that in one sense we call those acts just that tend to produce and preserve happiness and its components [i.e. virtues] for the political community' (*EN* 5.1.1129b14-19). That is, the *nomoi* aim at the common advantage of some political community, whether it be those who hold power (as Thrasymachus would say),²⁵ or the best (as the Spartans would say), or 'of all' (as in the Kallipolis of Plato's *Republic*). Aristotle does not assume here that the only laws deserving of the name are those that would be enacted by ideal *nomothetikê* (cf. *Leg.* 4.715b). But like Plato, he rejects the Thrasymachean picture of *politeia* and legislation as the product of power relations and domination of one group over another. Aristotle's middle way is to insist that laws should aim at the 'common advantage', at 'what produces and preserves happiness and its components for the political community'. And if that is what laws aim at, though with differing understandings of what common advantage consists of, then there will be a spectrum of laws that do this better or worse. Many if not most of them will do this badly without the guidance of *politikê epistêmê*, on whose epistemic authority Plato and Aristotle rely for evaluating laws.

As I have noted before, Aristotle says remarkably little about *nomothetikê*. He only uses the term *nomothetikê* two other times besides this passage (*EN* 6.8.1141b25, *Pol.* 7.2.1325a11), and never goes beyond programmatic remarks.²⁶ As for *politikê*, Aristotle famously opens the *Nicomachean Ethics* by announcing that the subject of the treatise belongs to *politikê* (*EN* 1.2.1094a27-b11), indicating that his audience is the would-be *politikos* and reminding us of the

²⁵ Reading with K^b *tois kurois*, and omitting *kat' aretên* at 1129b16.

²⁶ Aristotle does use the adjective *nomothetikos* 'capable of legislating' in *EN* 10.9.1180a33, 1180b24, 29; *EN* 5.1.1129b13.

goals of *politikê* (1.4.1095a14-17), its epistemic requirements (1.3.1095a2-3), and what the *politikos* needs to know in order to be able to legislate well (2.3.1105a11-13). It is architectonic, because *politikê* ‘ordains which of the sciences should be studied in a state’, ‘uses’ the other sciences, and ‘the end of this science must include those of the others’ (1.1.1094a27-b5). And the end of *politikê* is the human good, which Aristotle concludes ‘are the ends at which our inquiry aims, since it is political science [*politikê tis ousa*], in one sense of that term’. That is, Aristotle’s inquiry concerns ‘political science’, which turns out, much like Protagorean *euboulia*, to be the same as *phronêsis*, the art of deliberation — though it requires in addition knowledge of the human good.

Whereas Plato takes some pains to introduce the term *politikê* in the *Gorgias* and devotes the *Statesman* to exploring the concept of the *politikos*, Aristotle is happy to take over the concepts of *politikê* and *politikos* without much explanation. In *EN* 1.13 he repeats almost verbatim the Athenian’s reminder at the end of the first book of the *Laws* that ‘knowing the natures and conditions of souls’ is a task for *politikê*. He notes that the *ho kat’ alêtheian politikos* must study virtue, because his goal is to ‘make his fellow citizens good and obedient to the laws’, as the Cretan and Spartan lawgivers have done. And since the goal is to cultivate human virtue, the *politikos* must therefore study the human soul, much as a doctor must study the human body (*EN* 1.13.1102a5-27, cf. *Leg.* 1.650b9). Aristotle returns to the concept of *politikê* and *politikos* at the end of the *Nicomachean Ethics*, when he notes, again, that laws are the ‘works’ of *politikê* (10.9.1181a23)²⁷; he reminds us that to be a legislator one must have knowledge of what is good

²⁷ *Politikê* in *EN* 10.9 also at 1180b31, 1181a11, 12; *politikos* at 1180b30, 1181a5, 1181a11; *ta politika* 1180b35, *hoi politeuomenoi* 1181a1.

for people and how to bring this about by means of laws in a way that – as many have noted – echoes Plato’s *Laws*.²⁸

However, one very significant departure from Plato has to do with the nature of political wisdom, i.e., the epistemological basis for the legislative art. Whereas Plato tended to think this was a kind of theoretical knowledge – one that is based in one’s grasp of the Forms — and uncritically assumed that it was a straightforward matter to apply this knowledge to particular circumstances (at least in the *Republic* (e.g., 7.520a-d).²⁹ At any rate, Aristotle came to disagree, and introduced his famous distinction between practical *phronêsis* and theoretical *sophia*, a distinction that Jaeger noted is not in the *Protrepticus* or the *Eudemian Ethics*, for example, but

²⁸ In addition to the references above in nn. 2-3, I add M. Schofield, ‘Aristotle’s Political Ethics’, in R. Kraut (ed.), *The Blackwell Guide to Aristotle’s Nicomachean Ethics* (Malden, MA: Blackwell 2006), pp. 305–22 and D. Frede, ‘The Deficiency of Human Nature: The Task of a ‘Philosophy of Human Affairs’, in G. Keil and N. Kreft (eds.), *Aristotle’s Anthropology* (New York: Cambridge University Press, 2019), pp. 258-274.

²⁹ Though, as El Murr has shown, Plato attempts to rectify this in the *Statesman* with a new definition of statesmanship and *politikê epistêmê* as demiurgic activity (D. El Murr, *Savoir et gouverner: essai sur la science politique platonicienne* (Paris: J. Vrin, 2014), D. El Murr, ‘Theoretical, not practical’, and D. El Murr, ‘Platonic political demiurgy: prescription and action in Plato’s *Republic* and *Statesman*’, in F. Buddensieck (ed.), *Proceedings of the GANPH-Kongress in Frankfurt in September 2019*, Berlin: De Gruyter, forthcoming)).

is new to the *Nicomachean Ethics*.³⁰ Aristotle does not think political expertise can simply consist of applying Forms or universal knowledge to particular cases; instead, what's needed is first personal experience, as well as perception, and deliberation, all of which are required for *phronêsis* or practical wisdom.³¹ Knowing which laws and rules to devise for a state requires more than a theoretical grasp of what the human good is—and indeed, Aristotle emphasizes throughout the *Nicomachean Ethics* that experience counts more for more than theoretical knowledge when it comes to legislation.³²

Second, this then requires a new answer to the question of whether *politikê* is the 'master science' or 'kingly art'. Unlike Plato who regards *politikê* as belonging to *sophia* more generally because it is knowledge of the Good, calling it a *gnôstikê* or 'intellectual' science in *Plt.* 259c10-d2, Aristotle divides up types of expertise (*Met.* E1), distinguishing broadly between theoretical science and the practical and productive ones. In particular, he distinguishes *sophia*, theoretical wisdom, from *politikê* and *phronêsis* (*EN* 6.8). He carefully qualifies the sense in which *politikê* is 'architectonic'; the *politikos* knows the human good and therefore is able to direct the other

³⁰ Cf. Jaeger, *Aristotle*, pp. 81-88. On the complicated question of the relation of the so-called common books to the *Eudemian* and *Nicomachean Ethics*, see O. Primavesi, 'Ein Blick in Den Stollen von Skepsis: Vier Kapitel Zur Frühen Überlieferung Des Corpus Aristotelicum', *Philologus* 151/1 (2015), pp. 51–77, and D. Frede, 'On the So-Called Common Books of the *Eudemian* and the *Nicomachean Ethics*', *Phronesis* 64/1 (2018), pp. 84–116.

³¹ I owe this point to G. Striker, 'Two Kinds of Deliberation: Aristotle and the Stoics' (unpubl.).

³² A point made at *Resp.* 7.539e, though Plato leaves it to Aristotle to describe the significance of *empeiria* in practical reasoning.

crafts and types of expertise in the city on the basis of this knowledge (*EN* 1.1-2), but at the same time, holds that knowledge *peri archôn*, i.e., *sophia*, will be more ‘ruling’ than *politikê*, i.e., *phronêsis* (*Met.* A2. 982a16-19 (referring back to *Euthyd.* 279d6-281e5), 982b4-7). For ‘it is the function of the philosopher to be able to investigate all things’ (*Met.* Γ2. 1004a35), and *politikê* is ‘not supreme over philosophic wisdom, i.e., over the superior part of us, any more than the art of medicine is over health; for it does not use it but provides for its coming into being; it issues orders, then, for its sake, but not to it. This would be like saying politics rules [*archein*] over the gods, since it issues commands [*epitattei*] about everything in the city’ (*EN* 6.13.1145a6-11). Thus, *politikê* might issue commands over everything in the city – but nonetheless, it does not ‘rule’ in the way that *sophia* or theoretical wisdom rules over all the other sciences.³³

³³ On the tension between these texts over the question of which is the ‘master art’, see S. Menn, *The Aim and the Argument of Aristotle’s Metaphysics*, §Ia2, pp. 10-14, URL = <https://www.philosophie.hu-berlin.de/de/lehrebereiche/antike/mitarbeiter/menn/contents>, as well M.R. Johnson, “Aristotle’s Architectonic Sciences,” in D. Ebrey (ed.), *Theory and Practice in Aristotle’s Natural Science* (Cambridge: Cambridge University Press, 2015), pp. 163–86. M. Lane argues that Plato uses the term *architektôn* in the *Statesman* not in a way that anticipates Aristotle’s use of the term in the *EN* to refer to an overarching kind of expertise (*contra* M. Schofield, *Plato: Political Philosophy*, p. 182), but rather in the narrower epitactic role of overseeing other workers (M. Lane, ‘Politics as Architectonic Expertise? Against Taking the So-Called “Architect” in Plato’s *Statesman* to Prefigure This Aristotelian View’, *Polis* 37/3 (2020): pp. 449–67).

A third innovation that Aristotle introduces is his discussion of the virtue of *epieikeia* – understood as a part of the virtue of justice – which is a kind of understanding that allows one to see where and why general laws go wrong, and when exceptions to the rules need to be made (EN 5.10). (Arguably, though, the *Statesman* already includes this ability to see exceptions to the general rule as part of the kingly art (295b-297b).)

In the remainder of this paper, I will focus on three Platonic aspects of Aristotle’s conception of *politikê epistêmê*: its goal of legislating virtue (§5), the conception of laws as institutions (§6), and its conception of laws as public reason (§7). I will return to the two problems at the conclusion of the paper.

§5. Legislating virtue

Aristotle assumes that laws should aim to make citizens happy by making them virtuous; he, like Plato, is what contemporary political theory would call a perfectionist, since he holds that the purpose of laws and government is to promote well-being and virtue in citizens.³⁴ Like Plato, Aristotle takes as his starting-point the Laconizing tradition of legislation, as described by Xenophon in his *Politeia of the Spartans* (or *Critias*’, cf. DK 88 B32-7, and A22).³⁵ In the *Laws*,

³⁴ Cf. D.J. Depew, ‘The Ethics of Aristotle’s Politics’, in R.K. Balot (ed.), *A Companion to Greek and Roman Political Thought* (Malden, MA: Wiley-Blackwell, 2009), pp. 399–418.

³⁵ On the importance of the *Politeia of the so-and-so*’s genre, especially that of the Spartans, on Plato and Aristotle, see G.R.F. Ferrari, ‘Introduction’, in *Plato: The Republic*, trans. T. Griffith (Cambridge ; New York: Cambridge University Press, 2000), pp. xi–xxxi, and Menn, ‘On Plato’s *Politeia*’. On the *Laws*’ critique of Spartan and Cretan laws, see also Annas, *Virtue and*

the Spartan and Cretan laws provide the interlocutors with a starting-point: begin with an already existing constitution and introduce adaptations and modifications that will improve it. But Spartan laws focus too narrowly on only one part of virtue, namely military courage (*Leg.* 1.624a-632d, 3.688a, 4.705d, 12.963a), which the Athenian works to correct by means of lengthy arguments aimed at convincing Cleinias and Megillus that laws should aim at complete virtue. Aristotle shares with Plato the view that Spartan law should be praised for correctly aiming virtue, and attempting to instill good habits in citizens (*EN* 1.13.1102a8-11, 10.9.1180a25-30, *Pol.* 8.1.1337a31-33). Like Plato, he also criticizes the Spartans for their overly narrow conception of virtue (*EE* 8.3, *Pol.* 2.9, 7.2, 7.14-15, 8.4). He regards laws as the organizing framework of a city whose aim is to inculcate virtue. This feature of the laws justifies his assumption that lawful actions are just—e.g., ‘the law bids us do both the acts of a brave man (e.g. not to desert our post nor take to flight nor throw away our arms)’ (*EN* 5.1.1129b19-25). The laws provide moral instruction and guidance, by commanding us to do the acts of a virtuous person— or by prohibiting behavior that is inimical to and incompatible with virtue and common happiness. After all, there is a common core to almost all systems of legislation – they forbid certain types of harm to others, such as abandoning one’s post in battle, adultery, murder, theft, assault, rape, etc. (*EN* 5.7. 1134b17-30, *Rhet.* 1.12.1373b1-18).³⁶ Aristotle puts this familiar

Law in Plato and Beyond; Meyer, ‘Plato’s Laws’; and Z. Hitz, ‘Aristotle on Law and Moral Education’, *Oxford Studies in Ancient Philosophy* 42 (2012), pp. 263–306.

³⁶ A point made also by Striker, ‘Origins of the Concept’, p. 214, and Kraut, *Aristotle: Political Philosophy*, p. 115. At *EN* 8.9.1159b26-31, Aristotle says, ‘In every community there is thought to be some form of justice, and friendship too’.

point –that we all have an interest in protecting ourselves from such behavior from others – in terms of that behavior being inimical to virtue *in the agent*: criminal behavior is not conducive to one’s own virtue and happiness (cf. Pl. *Grg.* 477d-e). That is, ‘the law bids us practice every virtue and forbids us to practice any vice’ (*EN* 5.2.1130b20-29). And this is the aim of *politikê*: ‘making the citizens be of a certain kind, viz. good and capable of fine deeds’ (*EN* 1.9.1099b29-32; see also 1.13.1102a7-12). He returns to the thought that laws will provide moral education in *EN* 10.9, where he compares the laws to a father educating his children (10.9.1180a6-13, 1180b3-13). In the *Rhetoric*, Aristotle describes the aim of aristocracy as being ‘the maintenance of education and what belongs to the law’ (*Rhet.* 1.8.1366a5-6).

Aristotle’s understanding of the nature and aim of legislation is clearly inherited from Plato, especially the *Laws*, which holds that the aim of the lawcode is not simply to benefit the citizens, but specifically to inculcate virtue. In *Laws* Book 1, the Athenian points out that there are two aims of a law code. First, it should persuade the citizens, and not simply command them to do or not to do something, by means of preambles to the laws that will persuade the citizens of the rationale that motivates the laws (*Leg.* 2.722d-724b). Second, the law code must have in view (*apoblepein pros*) a single target (*skopos*), and all enactments must have in view (*apoblepein pros*) or be for the sake of (*heneka, charin*) that target.³⁷ And that target is virtue, since happiness (*eudaimonia*) for a city as for an individual depends primarily on the possession of virtue, rather than wealth, health or power. Thus, ‘the legislator from Zeus in this country and any legislator who is any good will set his primary sights on (*blepôn pros*) nothing other than the greatest

³⁷ Meyer draws attention to this language in *Laws* I (‘Plato’s *Laws*’, p. 360).

virtue (*tên megistên aretên*) when he establishes laws” (*Leg.* 1.630c1-4, tr. Meyer; see also 4.705d-706a, 6.770c-e, 12.963a).

Though Aristotle affirms the teleological nature of legislation and of *nomothetikê*, he does not discuss the relation of law to virtue in the kind of detail that we get in Plato. For example, it’s unclear what he thinks about preambles as a means of persuading citizens to obey the law willingly.³⁸ There’s nothing in Aristotle that is comparable to the Athenian’s elaborate discussion at *Leg.* 1.630c-632c on the task and method of the legislator. He appears simply to accept the account given in Plato’s *Laws*, and mostly focuses his attention instead on points of disagreement with Plato.³⁹

§6. Laws as institutions

Plato’s *Laws* also helps to shed light on what exactly the laws are supposed to look like. Modern readers of Aristotle’s *Nicomachean Ethics* who have not read the *Politics* or Plato’s *Laws* tend to assume that by ‘laws’ Aristotle has in mind something like moral principles (e.g., laws

³⁸ As noted by Annas (*Virtue and Law in Plato and Beyond*, pp. 165-166), though see *EN* 10.9.1180a7-14, *Pol.* 7.1.1323b37, Bodéüs, *Political Dimensions*, pp. 49-56, and especially Vlahovic, *The Sovereignty*, who argues that Aristotle thinks the lawcode should serve as a textbook for the moral education of citizens.

³⁹ Barker puts this rather negatively when he says, concerning *Politics* II 6, that ‘His main concern is to point to what he sees as faults in Plato’s treatment rather than to engage in constructive discussion’ (Barker, *Greek Political Theory*, p. 340).

commanding virtue, *EN* 5.1-2) or legal statutes. But these are not all that he has in mind.⁴⁰ For Aristotle, laws are the moral, social, and political institutions and practices that make up the shared life constituting the city. This goes back to one of the original meanings of *nomos* in the sense of unwritten social customs and practices, structured and organized ways of life.⁴¹ These unwritten laws may be communal and compulsory, features that Aristotle discusses and defends in the final chapter of the *Nicomachean Ethics*, where he explains why laws are better at moral education than private voluntary efforts. Laws are more effective than the ‘paternal command’ because they have a ‘force’ (*to ischuron*) and a ‘compulsive power’ (*anagkastikê dunamis*) and therefore are coercive and mandatory. They are more effective because they are communal institutions applying to all citizens, which are resented less (*EN* 10.9.1180a14-24, see also *Pol.* 8.1.1337a25).

Aristotle is thinking not of Athenian law, which is mostly concerned with procedures and the administration of justice,⁴² but of the laws of Sparta, as well as those of the *Laws*’ Magnesia. Of course, Magnesia is given laws which in the strict sense are written prescriptions or commands, with penalties stipulated in case of transgression (773c6, e4; 789e4, 791a1f.). But the laws are not simply those written prescriptions, but are more generally the communal institutions

⁴⁰ For a study of law in Aristotle, see G. Duke, *Aristotle and Law: The Politics of Nomos* (Cambridge ; New York: Cambridge University Press, 2020), pp. 5-6.

⁴¹ M. Ostwald, *Nomos and the Beginnings of the Athenian Democracy* (Oxford: Clarendon Press, 1969), pp. 20-54.

⁴² C. Carey, ‘The Shape of Athenian Laws’, *Classical Quarterly* 48/1 (1998), pp. 93–109, at p. 93.

prescribed by those written prescriptions for the citizens.⁴³ For example, ‘drinking-parties’ (*symposia*) are an important educational tool which tests how people react to pleasure and pain especially when inhibitions have been loosened (*Leg.* 1.641a-650b).⁴⁴ Similarly, common meals (*sussitia*) serve to unify the community and eliminate the private sphere as much as possible (*Leg.* 5.739b8-e5). *Laws* Books IV-V begin by detailing the ‘preconditions’ for the establishment of various institutions – e.g., geography, demography, division of land among the citizens and the economy then moves on to the *politeia*, i.e., the establishment of magistracies (*katastasis archon*) and of the public offices (*Leg.* 6.751a5, cf. 5.735a5). Then Books VI-VIII begin the project of legislation proper, for institutions such as religious festivals, marriages, households, producing children, rearing of infants, physical training of children, musical education, school curriculum, daily regime for adults, hunting, sexual relations, agriculture, crafts, and trade. The Athenian thus discusses a wide range of social, economic, and moral institutions – all with a view to producing virtue in citizens. For example, hunting is to be regulated so that one hunts not for sustenance or enrichment but for the sake of exercise and to cultivate healthy and active good habits — which is why ‘lazy’ forms of hunt like fishing and the use of lobster-pots are prohibited, as well as hunting for birds which promotes ‘low and slavish cunning’ (*Leg.* 7.823d-824a).

⁴³ In the *Republic*, communal institutions are mostly confined to the guardians, whereas in the *Laws*, communal institutions are to extend to ‘the entirety of the constitution’ (*Leg.* 5.739c1f.), though unlike in the *Republic*, there is private property (for discussion of these and other differences, see Laks, ‘The *Laws*’, p. 272).

⁴⁴ Cf. Annas, *Virtue and Law in Plato and Beyond*, pp. 49-51.

Legislation in Magnesia covers both what we would call ‘private’ life and public life, and, as Laks points out, the legislation of private life is difficult and problematic (‘The *Laws*’, p. 287). Plato mostly proposes ‘unwritten laws’ (*Leg.* 7.793a9f., cf. 6.773e3), ‘intermediate between admonition and law’ (7.822d6f.), i.e., conveyed not so much by law as by ‘praise and blame’ (5.730b5-7, 6.773e2-4, 7.824a10f.). These mostly unwritten laws are transmitted and enforced through tradition and orality.⁴⁵

These are the sorts of mostly unwritten laws and customs that Aristotle has in mind—social institutions and practices for people who are living together, share resources, and accept limits and regulations on their use of those resources. As has often been noted, Aristotle’s legislation in *Politics* VII and VIII bear a striking resemblance to Plato’s— though he covers only a subset of the topics that are covered in the *Laws*.⁴⁶ (He mostly skips laws in the narrow sense of orders combined with punishments, such as would be found in penal legislation.) Instead, his focus is on communal institutions and shared ways of life, covering topics such as territorial legislation, the division of property, economic legislation, marriage, procreation, physical training and song and dance for children, and finally education and leisure in *Politics* VIII. By far the most important area of legislation for Aristotle has to do with education, and specifically ‘music’, the purpose of which is to teach citizens to take pleasure in and enjoy morally virtuous actions. Musical education aims to instill habits and influence one’s character and soul, by teaching us to love, hate, and enjoy in the right way (*Pol.* 8.5.1339a20-25, 1340a12-27). Here too Plato’s influence is obvious.

⁴⁵ Cf. Laks, ‘The *Laws*’, p. 265.

⁴⁶ See Schofield, ‘The *Laws*’ Two Projects’, pp. 14-15.

§7. Law as public, divine reason

As noted earlier, Plato thinks that laws are intrinsically deficient as prescriptions of what to do. In comparison with a wise ruler's knowledge, written laws are rigid and overly general; they are deficient because they cannot take into account all the particular and individual circumstances (*Plt.* 294a-295e). Even so, Plato describes law as reason, even divine reason, for he thinks of laws as the expression of public order and rationality whose origin is ultimately to be credited to god as *nous*. In the *Laws*, the Athenian introduces an argument that the best political system is one governed by the rule of law made for the common good.⁴⁷ He says “whatever there is of immortality in us, we should follow that both in public and private life, in the management of our homes and our cities. And the name we should give these provisions made by reason is law” (*Leg.* 4.713e-714a, tr. Griffith⁴⁸; cf. 12.957c5-7), offering *nou dianomê*, literally ‘distribution of *nous*’, as the etymology of *nomos*. This is to reject the Thrasymachean argument that all laws originate in the rule of one group over others and are *politeia*-relative; rather, it is possible to produce laws that are ‘dispensations of reason’ reflecting a universal, and objectively just, order. The laws are therefore an external reflection of reason in the social order, and they teach humans to live in accordance with reason, and to avoid the ‘arrogance and injustice’ characteristic of human rule (*Leg.* 4.713c). In the form of communal coercive institutions, they serve to curb

⁴⁷ See Hitz, ‘Plato on the Sovereignty of Law’, pp. 369-371 for a very helpful explanation of what ‘rule of law’ means for Plato.

⁴⁸ Translations of the *Laws* in the remainder of this chapter come from *Plato: Laws*, trans. T. Griffith (Cambridge; New York: Cambridge University Press, 2016), with modifications.

human passions and appetites. Already in the *Republic* IX, Socrates identifies law with reason: ‘it’s better for everyone to be ruled by what is divine and wise (*hupo theiou kai phronimou*).

Ideally he will have his own divine and wise element with himself, but failing that it will be imposed on him from outside, so that as far as possible we may all be equal, and all friends, since we are all under the guidance of the same commander’— i.e., in the form of law ‘which is the ally of all the inhabitants of the city’ (*Resp.* 9.590d2-e2, tr. Griffith).

The *Laws* famously begins with the word ‘the god’, who is credited not only as the guide for Spartan legislation, but also for the legislative project that the interlocutors undertake (*Leg.* 1.624a1-2). The gods should be credited as the ultimate source, not in the efficient sense but in the formal sense, for the best laws. Political systems such as democracy or oligarchy ‘are not true political systems, but simply ways of running cities in such a way that they are masters and slaves to one part of themselves—each of them being called after the ruling element in it.

Whereas if it really was right for the city to be called after something in this way, then what it ought to be called after is the name of the god who, for those who can think straight, truly is the master’ (*Leg.* 4.713a1-4). Magnesia is in this sense a kind of ‘theocracy’, or, to use Laks’ phrase, a ‘noocracy’.⁴⁹ That, at any rate, seems to be the upshot of a difficult passage, in which the Athenian says, ‘If [the soul] is receptive to reason—which the gods take as, in a true sense, god—it guides everything along the right lines, towards happiness’ (*Leg.* 10.897b). Similarly, the introduction of the concept of preambles begins with an ode to god and to ‘divine law’ (*theios nomos*) which holds that god, not man, is the ‘measure’ of all things (*Leg.* 4.715e-716c).

⁴⁹ Cf. Laks, ‘The *Laws*’, pp. 260-1.

When law is enacted that can be credited to divine reason, it can govern individuals as their own faculty of reason ought to. In Plato's famous puppet analogy, the Athenian offers the following working definition of law:

Presiding over all this [i.e., feelings of pleasure and pain]—deciding which of them is better or worse—is 'reasoning' [*logismos*]; and when this is enacted by the city as a whole, it is called 'law' (*Leg.* 1.644c-d).

The Athenian goes on to identify the rational part of the soul as the 'pull [that] comes from the golden and sacred string of reasoning, which calls in aid the public law [*koinon nomon*] of the city', i.e., 'the finest pull which is from the law' (*Leg.* 1.644d-645a). Thus, the Athenian identifies law as public reason, which he says is the same in nature as the individual reason that each of us possesses; they are both forms of reasoning (*logismos*), but law in addition harnesses the coercive power of the community. It is, as Annas puts it, 'public reason, embodied in a directive form in public institutions and sanctions' (*Virtue and Law in Plato and Beyond*, p. 121).

When we take those public institutions and sanctions as giving us reasons for action and when we allow our desires and preferences to be guided by those — we can curb our unruly and selfish appetites and live in a rational way, directed by the laws to live together in ways that promote the common good. This is why the Athenian explicitly credits to the divine – and to our share of the divine – the presence of reason both in our own lives and also in the directives of *nomos*.

Aristotle repeats Plato's points about the deficiencies of the law, as well as his praise of law as the expression of divine reason (*Pol.* 3.15.1286a8-15, to which he returns at

3.16.1287a33-1287b5, referring to *Plt.* 294a).⁵⁰ However, this comes in *Pol.* 3.14-18, where his examination of kingship – with some forms of kingship that are ‘by law’ and others that are not – leads him to ask which is better, rule by man or rule by law. Since this entire stretch of argument in *Politics* 3.14-18 is one of the most intensely dialectical passages in all of Aristotle, it’s possible he’s referring to Plato’s ideas without endorsing them. Aristotle certainly does not endorse the argument that rule by the best man is always better than rule by the best laws (contra *Plt.* 294), but counters it with arguments in favor of the collective wisdom of the many and the rule of law (*Pol.* 3.15.1286a20-35, 3.16.1287a20-33). Even if the best man can be found, such rulers should be “guardians of and assistants to the laws.” The laws make provision for educating the rulers, who will be responsible for implementing the laws, and making corrections as needed to the laws. And in a final, deliberate echo of Plato’s *Laws*, he says that ‘One who asks law to rule, therefore, seems to be asking god and reason (*ton theon kai ton noun*) alone to rule, while one who asks man adds the beast. Desire is a thing of this sort; and spiritedness perverts rulers and the best men. Hence law is reason (*nous*) without appetite’ (*Pol.* 3.16.1287a28-32, see also *Protrepticus*, 6.39.9-40.11).

Why is the rule of law like the rule of god and *nous*? It is precisely the fact that law is not a person; it’s a set of prohibitions and commands based on thought and deliberation, and so it

⁵⁰ For this reason, when Laks suggests that ‘in spite of its insistence on the “human factor”, [the *Laws*] remains so distant from Aristotle, in the very moment where it seems to pave the way for him. This is because it is, in its fundamental orientation, an anti-Protagorean treatise: god, not man, is the measure of political order’ (*The Laws*’ p. 292), I wonder whether Aristotle is in fact so distant from Plato here.

cannot have corrupting emotions and desires itself (though of course nothing guarantees that that thought and deliberation might not itself become corrupted). When a human being rules, then desire, spirit, and appetite rule, and the ruler acts for purely selfish and self-interested reasons – and does what is good for himself alone, and not for the whole (*EN* 5.6.1134a35).⁵¹ Similarly, Aristotle says in the concluding chapter of the *Nicomachean Ethics* that rule by law is rule by reason, because ‘the law has compulsive power, while it is at the same time a rule (*logos*) proceeding from a sort of practical wisdom and reason (*apo tinos phronêseôs kai nou*). And while people hate *men* who oppose their impulses, even if they oppose them rightly, the law in its ordaining of what is good is not burdensome’ (*EN* 10.9.1180a20-25). Why should law be ‘a rule proceeding from a sort of practical wisdom and reason’? Why should we be so confident that laws are themselves rational and ‘ordain what’s good or right’ (*tattôn to eipieikes*)? Clearly not all laws do so, at least not successfully. They can misconstrue the target, or grasp the target correctly but choose inadequate means for bringing it about, as *EN* 5.1 concedes ‘and the rightly framed law does this rightly, and the hastily conceived one less well (1129b24-25). Even so, Aristotle continues to think of the laws as rational, because they are normative prescriptions and commands that (should) aim to bring about some good. Aristotle associates *nomos* with *taxis* or ‘order’: ‘law is a kind of ordering’ (*taxis tis*, *Pol.* 7.4.1326a29-30); e.g., the organization of ruling and being ruled in turn is law, ‘for the organization is law’ (*Pol.* 3.16.1287a12). Plato too associates *nomos* with *taxis*: ‘It is the goddess herself, fair Philebus, who recognizes how excess

⁵¹ As Annas says, ‘Plato never budes from his conviction that it is selfishness which is the main problem in human social organization; he states this explicitly in the Athenian’s address to the citizens (*Laws* 731d6-732b5)’ (*Virtue and Law in Plato and Beyond*, p. 66).

and the overabundance of our wickedness allow for no limit in our pleasures and their fulfillment, and she therefore imposes law and order as a limit on them. And while you may complain that this ruins them, I by contrast call it their salvation' (*Phlb.* 26b, tr. D. Frede; cp. *Leg.* 2.673e). So too, for Aristotle, laws are forms of social organization that guide, limit, and shape human behavior.

To conclude, there is a nexus of ideas shared by Plato and Aristotle: some laws—the best laws—are a public expression of reason, i.e., of the same directives that should direct the rational person. This constitutes a powerful and idealized picture of what the law can be in the city, and of its potential for shaping the characters of the citizens. Aristotle appears to espouse these positive and optimistic views about what law can be. Like Plato, he distinguishes between good law – which Plato thinks can ultimately be credited to the gods as the formal cause and which Aristotle credits to *nous* – and merely conventional law, which is the product of power politics, agreement, and compromise.

In *Politics* 1.2, Aristotle famously argues that right conduct towards others must be a part of the human life, because humans are essentially social or 'political' beings, for whom life in a community is the most natural way of life. But if humans cannot live except in society, and to live in society they need to have the virtues and to obey laws that are necessary for the well-functioning of the community, then it follows that happiness cannot be achieved without obedience to the laws — as long as those laws are at least minimally concerned with securing the overall happiness of the community. So justice is natural for us — it is part of a good, natural human life. At the same time, Aristotle acknowledges that justice is the most demanding of the virtues, because it requires that one do what is, in Thrasymachus' words 'another's good' (*EN* 5.1.1130a4, cf. *Resp.* 1.343c). And he is notably averse to defending the so-called Socratic

paradoxes, including e.g., the thesis that the just person is happy even on the rack — he says that no one would maintain this ‘unless he were maintaining a thesis at all costs’ (*EN* 1.5.1096a1-2, 7.13.1153b19-21). Aristotle thus accepts that obedience to the laws, and the virtue of justice which requires such behavior, is part of a natural, happy life, without supposing that it’s always possible to show that every just action will necessarily always promote one’s own self-interest. Sometimes Thrasymachus is right – just action means doing what is good for someone else.

How good is this as a response to the two problems we began with, the problems of objectivity and of the congruence of justice and happiness? While it certainly explains why Aristotle is so optimistic about the solution for both problems, it also makes it clear how much his optimism depends on the possibility of giving an account of the human good by political science. Even if Aristotle rejects the relevance of the Form of the Good for this project, he still needs an account of the human good for his political theory. Without this, we are left, as Rawls pointed out in *Political Liberalism* (2005), without a comprehensive theory of the good, and must face the unavoidable modern problem, that citizens in a free society have disparate worldviews, differing conceptions of right and wrong, on religion and culture – in short, that there is an ineradicable plurality and diversity in beliefs and conceptions of the human good. If so, then a new problem arises which Aristotle did not (in my view) consider, namely, the problems of legitimacy of the laws when there is no unified conception of the good available to justify these laws.

Second, Aristotle clearly assumes that the point of laws is to establish institutions, practices, and ways of life that will promote the human good and happiness. Any modern reader will realize that Plato’s and Aristotle’s proposals for such laws and institutions depend upon numerous empirical assumptions about human psychology and society. For there is no way to

tell in advance which social and educational institutions are best and most effective, apart from experimentation and experience. While Plato and Aristotle both may have relied upon the latest thinking – e.g., Damon’s musical theory⁵² – about what *paideia* should look like, this confirms what Aristotle seems to have realized, perhaps from reflecting upon Plato’s own theories, that the exercise of legislation will require personal and collective experience about the ‘experiments in living’, to use Mill’s phrase, which are most likely to bring about happiness for a community.⁵³

⁵² On the importance of music in Aristotle’s *Politics*, see A. Ford, ‘Catharsis: The Power of Music in Aristotle’s *Politics*’, in P. Murray and P. Wilson (eds.), *Music and the Muses: The Culture of “mousikē” in the Classical Athenian City* (Oxford ; New York: Oxford University Press, 2004), pp. 309–36; on music in Plato’s *Republic*, see M. Schofield, ‘Music All Powr’ful’, in M. McPherran (ed.), *Plato’s Republic: A Critical Guide* (Cambridge: Cambridge University Press, 2010), pp. 229–48, and for a reappraisal of the importance of Damon, see R.W. Wallace, *Reconstructing Damon: Music, Wisdom Teaching, and Politics in Perikles’ Athens* (Oxford: Oxford University Press, 2015).

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