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ARISTOTLE ON NATURAL JUSTICE

In *Nicomachean Ethics* book 5 chapter 7 (or *Eudemian Ethics* book 4 chapter 7),¹ Aristotle introduces the topic of natural justice. His brief and elliptical discussion has provoked much controversy.² It seems to confuse the issue rather than do anything to clear it up. The natural just, if there is such a thing, must be the same everywhere, for nature is the same everywhere, as Aristotle concedes with his example of fire that burns upwards here and in Persia. Yet he goes on to argue that there is nothing naturally just the same everywhere for everyone, but that the natural, at least for us human beings, always changes.

There are clues in the passage in question that scholars have focused on in order to unravel Aristotle's meaning. But there is one clue that scholars have hitherto almost entirely ignored (an exception is Dirlmeier,³ who

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¹ Further on, the *Nicomachean Ethics* will be cited as *NE*, and the *Eudemian Ethics* as *EE*.

² In particular L. Strauss, *Natural Right and History* (Chicago 1953), 157–164, who, after discussion of the views of Aquinas and Averroes, adds his own corrupt interpretation. See also Oscar Godoy Arcaya, *La Democracia en Aristóteles: Los Orígenes del Régimen Republicano* (Santiago de Chile: Ediciones Universidad Católica de Chile, 2012), VIII, 1, sect. 3, F. Dirlmeier, *Aristoteles, Nikomachische Ethik, übersetzt und kommentiert* (Berlin 1959), 420–421, and F. Dirlmeier, *Aristoteles, Magna Moralia, übersetzt und erläutert* (Berlin 1958), 323–324, R.A. Gauthier and J.Y. Jolif, *L'Ethique à Nicomaque* (Paris 1958/59), 392–396, S. Broadie and C. Rowe, *Aristotle Nicomachean Ethics. Translation, Introduction, and Commentary* (Oxford 2002), 348–349. Broadie says nothing on this passage in her *Ethics with Aristotle* (Oxford 1991). The passage in Aristotle's *Rhetoric* (1373b2–8) where mention is made of a law according to nature is of doubtful significance for Aristotle's own views since he there seems merely to be reporting kinds of rhetorically useful arguments and not endorsing any of them on his own account.

³ F. Dirlmeier, *Aristoteles, Nikomachische Ethik*, 420–421, where he simply repeats, without comment, what *MM* says (further on, the *Magna Moralia* will be cited as *MM*). His discus-

however does little more than refer to the fact). For Aristotle has left us another discussion of the always changing natural just, and this other discussion is in some ways clearer. It certainly contains clues that the *NE/EE* discussion omits. There is a ready explanation for the neglect by scholars of this other discussion. For it is contained in a work, the *Magna Moralia* (or *Great Ethics*), that most scholars dismiss as spurious. Fully to examine the reasons given for *MM*'s inauthenticity would here take us too far afield. Suffice it to note, first, that the majority of scholars who have devoted serious study to *MM* (notably Von Arnim and Dirlmeier) do think it genuine, and, second, that *MM* itself contains a passage that is almost a self-confession by the author that he is Aristotle. The passage (1201b24–26) is a reference to the *Analytics* and to something “we said” in that work. If the *Analytics* is the *Posterior Analytics* of Aristotle, then here is Aristotle saying directly in *MM* that he wrote *MM*. The reference can be explained away, for perhaps the *Analytics* is the lost work of the same name by Theophrastus;⁴ or perhaps the author is pretending to be Aristotle in order to win an audience. The burden of proof, however, is on those who deny *MM* to Aristotle, since, apart from the internal reference just mentioned, the work is universally attributed to Aristotle by the ancient tradition, and, as Rowe wisely remarks,⁵ we should accept the tradition unless we have compelling reasons against it. That there are no such compelling reasons has been extensively argued elsewhere.⁶ It will be enough for present purposes if the passage in *MM* gives us clues for making sense of the parallel passage in *NE/EE*, and indeed a sense that, on careful consideration, that passage itself can be seen to point to.

The Relevant Texts

To begin with, then, here are translations of the relevant texts, first from *NE/EE* and second from *MM*.

sion directly of the *MM* passage (*Aristoteles, Magna Moralia*, 323–324) is brief and misses what, in this paper, is argued to be its chief significance for understanding the *EE/NE* passage.

⁴ Pierre Pellegrin, “Preface,” in C. Dalimier, *Aristote. Les Grandes Livres d’Éthique (La Grande Morale)* (Paris: Arléa, 1992), 23.

⁵ C.J. Rowe, *The Eudemean and Nicomachean Ethics: A study in the development of Aristotle’s thought* (Cambridge 1971), 12.

⁶ The matter has been dealt with at length in the Introduction to Peter L.P. Simpson, *The Great Ethics of Aristotle* (Transaction 2014).

NE/EE 5/4, 7, 1134b18–15a3:

Of the political just there is the natural and the legal: natural being what has everywhere the same force and not because it is thought so or not thought so; legal being what makes no difference this way or that at the start but does after people lay it down, as to charge a mina for a ransom . . . Some think everything is of this sort because what is by nature is unchangeable and has everywhere the same force, as that fire burns both here and among Persians, but they see just things changing. This is not how it is, except in a way, though at any rate with the gods perhaps it is not so at all. With us there is something that is by nature. Everything may be changeable but yet one thing is by nature and another not by nature. Which sort is by nature, given that things can also be otherwise, and which sort is not but is by law and contract, if indeed both are changeable, is likewise plain. In fact, the same definition will fit the other cases. For by nature the right hand is stronger, yet there are some who could become dexterous with both. What is by contract and what is of advantage in things just are like measures. For measures of wine and grain are not everywhere equal but greater for buying and less for selling.

MM 1, 33, 1194b30–5a6:

Among just things some are by nature and some by law. But one should not take this in such a way that they are things that never change. For even things that are by nature partake of change; I mean, for example, that if all of us were to practice always throwing with our left hand we would become ambidextrous. Yet by nature, at any rate, it is a left hand, and right-handed things are no less by nature better than the left hand even if we were to do everything with our left hand as with our right. Nor is it because things change that they are therefore not by nature. But if it is for the most part and for the longer time that the left hand stays thus being a left hand and the right hand a right hand, then this is by nature. The same with things that are just by nature: it is not the case that, if they change because of our use, therefore there is no just by nature. On the contrary there is; for what persists for the most part, that is on its face just by nature. For what we set down and accept as law, that is both precisely just and we call it just by law; therefore what is by nature is a better just than what is by law.

Discussion of the Passages

It is standard Aristotelian doctrine that things by nature are things that happen always or for the most part. Things that happen for the most part exist by nature even though sometimes they do not happen or happen differently. Scholars generally suppose⁷ that in the passage of *NE/EE* and in that of *MM* Aristotle has this point in mind. For he gives an example of things by nature that can change or happen differently, namely the dexterity of the hands. The left and right hands are naturally different and are naturally fitted to do different things, but it is possible, by repeated practice, to make them do the same things and become ambidextrous. This point is, of course, not refuted by the existence of naturally left-handed people. For the same natural difference between the hands appears in them too, only the other way round, and it is their left hand rather than their right hand that is naturally more dexterous. Skill, we may say, naturally goes with one hand, and this natural differentiation remains the natural differentiation even if practice can bring the other hand up to the skill of the first. The reason, Aristotle adds in *MM*, is that the left and right hands are differentiated as left and right for the most part and for the longer time, or, in other words, that most people have the right hand more dexterous than the other and can only become ambidextrous after much practice. The same applies to justice as to hands, that the changes we make in naturally just things do not mean that there is no just by nature, for here as there what is for the most part is by nature.

The implication seems to be, then, that the just by nature is only what holds for the most part, so that occasions can arise where the just by nature no longer holds, or where, as it seems, what it is just to do here and now is other than what is naturally just. The further implication, then, seems to be that there is nothing that by nature is always and everywhere unjust to do, for occasions can arise where what it is just to do is what ordinarily or naturally it is unjust to do. Hence seduction or assassination, say, which are ordinarily or naturally unjust, might in special cases be just.⁸

In fact, however, Aristotle's remarks do not have this implication. He has earlier in *MM* distinguished his discussion of justice into three topics: the 'what' of justice, the 'in what' of justice, and the 'about what' of justice (1193a39–b1). As is made evident by how his analysis proceeds in

⁷ See note 2.

⁸ The interpretation insinuated by Strauss, *op. cit.*

the following pages, he means by the ‘what’ of justice equality (1193b19–30): the unjust man wrongs by taking more of the good and less of the bad and the man whom he wrongs is wronged by having the opposite, so justice is the equal that brings the more and the less into the mean of the equal. The ‘what in’ of justice is the persons and the things in which there is equality, and this equality, since it involves at least four terms (two persons and two shares), is an equality of proportion: as A is to B so C is to D. The ‘what in’ of justice, therefore, is persons and things as equalized through this proportion (1193b30–94a18). The ‘about what’ of justice, by contrast, turns on whether justice, which is a relation to another, is about relations to all others or only to some. For there are relations between masters and slaves and fathers and sons, and there is, by the same token, a just that exists in this relation. Aristotle dismisses justice in these cases as equivocal with the political just (1194b10–28). The political just exists in equality, which he then explains means the equality of the citizens in all being alike in their nature as citizens (even if they differ in other respects, 1194b5–10). He then adds (b28–30) that, since the just exists properly in the political community, justice is “about” the political just. Hence the ‘about what’ of justice refers to what goes on between citizen equals and not, say, to what goes on between fathers and sons or masters and slaves.

But what is it that goes on between citizens? Or what are the things that citizens have political justice about? Here is where the extended passage quoted from *MM* above begins (and analogously where the parallel passage in *NE/EE* begins), and where Aristotle introduces his distinction between just things by nature and just things by law (1194b30ff.). His remarks are thus less cryptic than they may seem. For since he is not talking now of what justice is (equality), nor of what justice is in (persons and things related by proportion), but of what it is about, the just things that justice is about must be the things that citizens share with each other (and in respect of which they seek the equality of proportion that is the ‘what’ and ‘in what’ of justice). But there is clearly plenty of variation here. In some cities these things are shared and not those, and shared with these people and not those (or these people are treated as citizens to share with and not those), while in other cities the things shared and the persons sharing (those counted as citizens) are different, or at any rate include more or fewer people and things. The fact of such variation is obvious, and any study, even today, of comparative politics and comparative anthropology would be rich in discovering examples of it.

Now some of these variations will turn out to be rare and some to be more common, or to exist for the most part. These variations will also reflect the different usages of different peoples and places. But “it is not the case that, if they [things just by nature] change because of our use, therefore there is no just by nature,” for “on the contrary there is; for what persists for the most part, that is on its face just by nature” (1195a1–4). Accordingly those customs about who shares what and with whom that exist for the most part in political communities will be the natural ones. When Aristotle continues, therefore, by saying that what we set down and accept as law “is both precisely just and we call it just by law; therefore what is by nature is a better just than what is by law” (1195a4–6), his meaning is that, while all communities lay down their own customs as law and call these customs just, yet the customs that are by nature (those that are for the most part) are better. Why are they better? Because they are in line with what holds for the most part; for thus they will not need any extra effort or time to develop. They will, on the contrary, arise spontaneously, as it were, in the way that people are for the most part right-handed and naturally develop skill in their right hand, becoming ambidextrous, if at all, only by some extra and unusual practice. But it does not follow that other customs, which are not by nature, are thereby not just or even that they are less just (or it does not follow for this reason).⁹ All that follows is that they are not the norm and require special effort and exercise in order to be established. The natural ones are therefore better (though not thereby more just), because they are easily and more effectively reached and are equally good or equally serve the purpose (as is also true of not bothering to become ambidextrous).

The passage in *EE/NE* about the natural and the political just can be seen to be saying the same thing. It follows a previous discussion of the ‘what’ and ‘in what’ of justice (5/4 chapters 1–6), and it also uses the same example of right and left hand. Further, it adds a remark about contracts and advantage in things just, that there are variations here according to variations in utility. These variations are clearly good because they enable us to go on achieving what is advantageous despite changes in need and circumstance. The end, we may therefore say, is everywhere the same, namely the good of common life, but the ways of getting there, whether by

⁹ Customs about who shares what with whom could be natural or unnatural, and just or unjust, relative to the regime where they are found. For regimes are natural or unnatural, just or unjust.

sharing these things or also those, whether by using these measures or others, vary considerably (even if some are more common than others). Such variation in achieving the end is a feature of human life, because human life is subject to change.

The distinction, then, in both ethical works between what is by nature and what is by law (because it concerns the ‘about what’ of justice and not the ‘what’ or the ‘in what’) is not the distinction between the just and the unjust. It is the distinction between the usual and the unusual. The distinction between the just and the unjust is what Aristotle explained earlier, namely the distinction between what accords with equality and what does not. But the particular things and persons ‘about’ which this equality is realized are no longer a question of the just and the unjust but of the usual and the unusual.

Implications of the Discussion of Natural Justice

We should not therefore conclude, as some scholars have done (Strauss in particular), that in the *EE/NE* passage Aristotle is implicitly denying the central claim of doctrines of natural law that there is an unchanging justice with respect to certain kinds of acts, as that murder, deceit, and the like are wrong always and everywhere. He plainly is not. For the absolute wrongness of murder, say, is a matter of the ‘what’ or ‘in what’ of justice. It is not a matter of the ‘about what.’ But only as regards the ‘about what’ does Aristotle allow for relativity. Moreover, that he only uses the term natural just in his discussion of the ‘about what’ does not mean that he would reject the idea of a natural or absolute unchanging just in the case of the ‘what’ and the ‘in what.’ On the contrary he makes it very plain that he does accept such an absolute just. An obvious example he gives is adultery, which he says in both *NE* (2, 6, 1107a8–28) and *EE* (2, 3, 1221b18–23), and also in *MM* (1, 8, 1186a36–b3), is always and everywhere wrong, or always and everywhere at the vicious extreme and contrary to the virtuous mean. He explains why adultery is at the vicious extreme when he talks expressly of the ‘what’ and ‘in what’ of justice. For he talks of adultery in his discussion of commutative justice, or justice in exchange (*NE/EE* 5/4, 5, 1131a6). The point is relatively straightforward. Adultery is an inequality in spousal exchange. The adulterer is taking what belongs to someone else (sexual relations with another’s spouse) and so has taken more than his share (for his share is to have no such relations with another’s spouse).

This distinction (a distinction between the just and unjust in particular actions) is the one we normally have in mind when we speak of natural right or natural law. For we mean by the natural in this case the just, and by the merely legal we mean what may in fact be unjust. Aristotle has this distinction but, as the example of adultery shows, he does not thematize it as the natural; he thematizes it as the mean of virtue. Adultery is by its name, he says, an extreme, that is, something always and everywhere wrong. Why is it always and everywhere wrong? Clearly because it includes wrongness in its idea or, as we might say, in its nature. The act itself is *per se* wrong, and such *per se* or intrinsic wrongness is precisely what doctrines of natural law have declared to be wrong by nature always and everywhere. This wrong in the case of adultery is the inequality in what is due as between the parties to the act (for acts of sex are not due as between those who are spouses of someone else).

Aristotle mentions many such kinds of intrinsic wrongs in his discussion of the mean of commutative justice. As he says (*NE/EE* 5/4, 5, 1130b33–31a9):

One sort of justice is that which sets exchanges right. Of this latter there are two parts. For of exchanges some are voluntary and some involuntary, the voluntary being such things as selling, buying, lending, pledging, using, depositing, hiring (they are called voluntary because the principle of these exchanges is voluntary), and the involuntary being in some cases by stealth, as burglary, adultery, poisoning, seduction, alienating of slaves, assassination, slander, and in other cases by force, as assault, restraint, death, plunder, mutilation, insult in words, insult in deeds.¹⁰

The latter or involuntary kinds of exchange are clearly wrong in their very name or, as natural law theorists would say, contrary by their very nature to what is right and just. They are by nature contrary to what is just because they are a grasping of what is more over and above what is

¹⁰ Other examples outside this list, as say homosexual acts, would be analyzed, not as violations of the virtuous mean of justice, but instead as violations of some other virtuous mean, as the virtuous mean of temperance. Note, however, that the violation of any mean of virtue is a violation of justice when justice means universal justice, for universal justice is the practice of all the virtues in respect of other people, *NE/EE* 5/4, 1. Political crimes, by contrast, as tyranny, would be analyzed under the idea of distributive justice, for distributive justice is about the correct distribution of rule in the city, and this distribution is violated by tyranny and by other deviant regimes.

due, namely over and above the equal of commutative justice. The cases Aristotle mentions in addition to adultery, as burglary, assassination, plunder, mutilation, insult, are all plainly things that, by their name, are at an extreme, the extreme of the 'more' beyond the mean of the 'equal.' That there is a right by nature here is plain from the way Aristotle speaks of this sort of justice and of how to calculate the equal in the several kinds of exchange. What conflicts with commutative justice is always and everywhere unjust (it is a taking of the more beyond the equal). Certainly such is Aristotle's plain teaching in the context.

Now the idea of commutative justice is in general clear (equality of exchange), but what it is in the case of this or that particular exchange need not be. The instances Aristotle lists are reasonably straightforward. But, regardless of whether any case or instance is straightforward or not, the answer will be found in the same way: by thinking through the things being exchanged and the persons between whom they are being exchanged and how equality with respect to them can be preserved or restored. These things and persons are the 'in what' of justice and equality is the 'what' of justice. In the case of burglary, for instance, we must examine the nature of burglary—that it is the taking (by stealth) of another's possessions. Such taking is clearly a taking of what is more than the equal, since the taker has more after the taking and the one from whom he took has less. The nature, then, or the definition of the act tells us how to understand the relevant equality.

We might nevertheless wonder why Aristotle does not thematize this topic of a right by nature under the idea of natural law, or why it was left to the Stoics to be the first so to thematize it. A first answer may be rhetoric. Aristotle had no need to introduce the idea of natural law to make his point, since the idea of the mean of virtue was enough for his purposes. The Stoics, by contrast, seem to have found an express appeal to natural law more effective in propagating their teaching among the educated elites of the day. A second answer may be a desire on Aristotle's part to avoid confusion. Natural law as used by the Stoics, and by others since, refers to the 'what' and 'in what' in Aristotle's analysis of justice. But it is not the case that the just in this sense exists for the most part. On the contrary, what most people do most of the time is not just, for most people most of the time try to get for themselves more than the equal. Since, then, nature is what happens always or for the most part (as that fire always go upwards), to say that there is a natural just in the case of the 'what' and the 'in what' of justice looks like saying that the actions of most people most of the time

are just, which however is either false or implies that the justice of actions is relative and that whatever anyone does is just or, as the common phrase has it, 'just for him.' Indeed people often still argue today against doctrines of natural law on the grounds that there is no such thing because what people do varies enormously from place to place and from time to time. Aristotle prudently refrains, therefore, from speaking of a natural just in respect of the 'what' and the 'in what' of justice so as to avoid this confusion and this argument. He speaks only of a natural just in the case of the 'about what' of justice, where indeed there is no conflict between the just and what happens for the most part because they here mean the same thing.¹¹

ARISTOTLE ON NATURAL JUSTICE

SUMMARY

The article discusses the problem of natural justice which has been considered by Aristotle in his (1) *Nicomachean* and *Eudemian Ethics* and (2) *Magna Moralia*. In his *Nicomachean* and *Eudemian Ethics* Aristotle says of natural justice that it is changeable and not the same everywhere. The implication seems to be that no action, not even murder, is always wrong. But, as is evident especially from his *Magna Moralia*, Aristotle distinguishes justice into the "what" (equality), the "in what" (proportion between persons and things), and the "about what" (what things are exchanged with which persons). The article concludes that Aristotle allows for variability only in the "about what," while in the "what" and the "in what" he allows for no variability.

KEYWORDS: justice, natural justice, Aristotle.

¹¹ 'Nature' is said in more than one way. In the case of justice and right it means first what happens always or for the most part, as Aristotle has explained. Second it means the end set up by nature, as that the life of virtue is by nature the human end. That this life is the natural end is true for all men always and everywhere, but not all men pursue it always and everywhere. The end men pursue they pursue by choice, and choice does not operate by nature but by desire and thought (Aristotle defines it as deliberative desire, *NE* 3, 2, 1113a10–15). So choice need not operate the same always and for the most part. One must speak with some care, therefore, when speaking of the good or just by nature. Aristotle chooses to exercise this care in one way, the Stoics in another.