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## ARISTOTLE ON LAW

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Few writers have more eloquently and convincingly defended the rule of law than Aristotle and the concept of law (nomos) plays a central role in his political thought. Law is important by virtue of the fact that men are by nature political animals, and to fulfill this nature they must regulate their affairs with laws. Also, men are rational, and this rationality expresses itself in men's capacities to formulate and abide by their laws.

Despite its importance in the political thought of Aristotle, his conception of law has not received sufficient study. Many discussions of his legal ideas have taken place primarily within the context of the Greek, or more specifically, the Athenian conception of law. J. Walter Jones, for example, in his valuable study of Greek law has extensive references to Aristotle's conception of law but these are used to shed light on the more general conception of Greek law.<sup>1</sup> Barker's short discussion of Aristotle's conception of law in his translation of the Politics emphasizes the importance of custom. This emphasis on custom is not distinctive of Aristotle's thought but of Greek law in general.<sup>2</sup> An understanding of the Athenian conception of law is, of course, essential for understanding Aristotle;<sup>3</sup> but nevertheless not enough has been said about Aristotle's contribution to the Athenian legal tradition.

A number of other studies of Aristotle's legal ideas have focused primarily on justice.<sup>4</sup> There has even been a tendency to identify the lawful and the just. Sir Ernest Barker, for example writes,

The natural character of the law precludes any distinction between what is legally just, and what is naturally just: to Aristotle, as to Socrates, the Legal and the Just are one.<sup>5</sup>

While Aristotle did assert that the just was 'in a sense' what is lawful, he clearly distinguished between them. There is in Aristotle's political thought a notion of law which is quite distinct from justice. This is not to say that for Aristotle justice is irrelevant for law. Justice is a standard for law, but a law does not have to be just to be a law.

The relationship between legality and justice raises the more general question of which characteristics are essential for law. Aristotle links law with, among other things, what is rational, sovereign, general, and

compulsory. One or more of these characteristics have been identified by other legal traditions as of the very nature of law. For example, the natural law tradition, as represented by Saint Thomas Aquinas, considers rationality to be essential to law. Whatever is contrary to reason cannot be law. On the other hand, the modern positivist tradition, as represented by Hobbes and Austin, has emphasized the sovereignty and compulsoriness of law. For Aristotle, which of the above characteristics are essential and which merely desirable? Can Aristotle be placed in either the natural law or the positivist tradition? Many scholars have supposed that Aristotle's legal ideas fit into either the natural law or positivist legal traditions. Von Leyden and Barker, for example, place Aristotle in the natural law tradition;<sup>6</sup> and Anton-Hermann Chroust emphasizes the positivist elements of Aristotle's conception of law.<sup>7</sup> In what follows, I argue that neither classification is correct, for Aristotle was neither a proponent of natural law nor a positivist. This point will emerge as I separate what for Aristotle are the essential from the merely desirable elements of law. I shall begin with a brief discussion of the Athenian conception of law before considering his legal typology to show that although some Aristotelian concepts are found in the natural law tradition, he himself did not develop a theory of natural law. Finally, I shall distinguish between those characteristics of law which are essential and those which are merely desirable. Aristotle held that generality and authority are defining characteristics, of law, whereas rationality and justice are only desirable. He never argued that a law must be rational and just to be a law. I shall consider his scattered discussions of law in the Politics, Nicomachean Ethics, Rhetoric and Constitution of Athens.<sup>8</sup>

#### The Athenian 'Nomos'

The Greek term often translated as 'law,' nomos, is related etymologically to nomizein (to believe) and nemein (to apportion or distribute). This suggests, first, that nomos is something believed in or generally held to be right. Regarding its relationship to nemein, for something to be apportioned, there must be an apportioner. An acting subject (or subjects) is presupposed; that is, some agency is required to make something a law. Law is an apportionment or enactment generally believed to be right. The idea of agency does not necessarily imply that nomoi are imposed from above, for the etymological relationship between nomos and nemein does not tell us the nature or source of the law-making process.

A study by Martin Ostwald helps to make the law-making process clearer. While Ostwald agrees that knowledge of the etymological relationships of nomos is helpful, it does not take us very far; and so he uses a 'semantic' method, which consists in inductively examining how the word is used in different contexts to discover a common denominator which establishes a basic meaning for a term.<sup>9</sup> From Ostwald's study, we learn that nomos had certain democratic associations in Athens. He argues that during the Fifth Century nomos replaced thesmos as the word for statute. The latter term implied a rule which is imposed from 'above' by a ruler who is separate from and independent of those upon whom the rule is binding. Although nomoi must be enacted in some way, either by a lawgiver, god, representative body, or a society as a whole, the essential aspect of nomos which distinguishes it from thesmos is that it is accepted as a valid norm within a given community. It designates an order, but it means more than other such terms, such as thesmos or taxia, in that the connotative emphasis is on the acceptance of and agreement with the order.<sup>10</sup> The positive tradition of modern law, as exemplified by the legal conceptions of John Austin and E.L.A. Hart, does not capture all the connotations of nomos. While nomos included many aspects of positive law, in that it was the primary device for maintaining peace and order, it was also often considered to be synonymous with peace and order itself. Because of this close association with the harmony of the polis, it was both a political and moral idea. The nomoi of the polis included the statutes, customs, traditions, morals, and rituals, in short, the way of life, of the political community. The continuing identity of a polis was maintained through its nomoi.

#### Aristotle's Varieties of Law

Because Aristotle did not write a single systematic theory of law we must recover his ideas from a series of scattered discussions in different contexts. A fruitful context is his account of the varieties of law.

It is possible to identify six types of law in Aristotle's writings. Each of these categories is not exclusive of all the others, but there are three pairs of mutually exclusive categories. Laws may be: customary or enacted; written or unwritten; and particular or general (or common) law. These pairs of categories intersect, so we may speak of written or unwritten customary laws and particular or common written law.

In the distinction between customary and enacted law the former appears more important. Customary laws are recognised in several passages (e.g., Pol. 1268b39-1269a25 and N.E. 1094b14) as the customs, traditions, and rituals practised from antiquity by the people of a community. These include such practices as respect for elders, the prohibition of murder and incest, marriage customs, and the moral virtues generally. These laws were believed to have survived from the time when the gods ruled men directly. As a result, they had a certain sanctity. People rarely were allowed to deviate from them and they were changed only with a great deal of caution and reluctance. Enacted law was deliberately established and enforced by those who were the accepted authority of a polis. Hence, Aristotle often refers to 'law givers' (nomothetai).<sup>11</sup> Customary law, of course, could not be exhaustive. Changes and additions were required, and these were provided by enactment.

Although Aristotle clearly refers to both enacted and customary law, some commentators have tended to over-emphasise one to the exclusion of the other. Shellens, for example writes,

The decisive characteristic of a norm (nomos) is that it is fixed (in some way) and enacted. Aristotle<sup>12</sup> repeatedly refers to the lawgiver, the nomothetes.

On the other hand, Barker says the opposite:

The law which Aristotle enthrones is no code: it is the custom, written and unwritten which has developed with the development of the state...The legislator has indeed the function of discovering and declaring this impersonal rule; but he declares it rather than enacts it. (Emphasis added).

Regarding Shellens' statement, it is true that customary law must be 'fixed' in some way, by being absorbed into the body of cultural beliefs, and that basic beliefs and practices are not preceded by enactment. The Athenians did not even know the source of some of their older customary laws; hence the belief that they were given to them by the gods. Regarding Barker's statement, Aristotle does not limit the role of the legislator to mere 'declaration'. He often refers to nomoi as being enacted (tithemi, keimai). The term tithemi has the same root as thesmos and keimai is often used as the passive construction of tithemi. The force of tithemi is that of 'imposing' or 'enacting' as opposed to merely 'declaring'. In the Constitution of Athens, Aristotle often speaks of lawgivers, such as

Cleisthenes and Solon, enacting or laying down laws.<sup>14</sup> To say that the legislator merely declares the laws is to say that the rules or principles being declared pre-exist in some way. Principles of 'natural justice' would satisfy this condition (N.E. 1134b19), but it is difficult to see what else would - except for unwritten customs which may have been codified (to which Barker refers). But to suggest that Aristotle meant that written laws only embody principles of natural justice or established custom limits the idea of legislation in a way Aristotle never intended. Certainly such an assertion does not have any textual support.

However, we saw that enacted laws were not dicta handed down by an absolute authority to be obeyed without question, for the change in usage from thesmos to nomos in Athens accompanied a shift in the conception of law from a rule imposed to a rule generally accepted. Aristotle was aware of the importance of acceptance. Acceptance, of course, is implied in the notion of customary law; but enacted law also required a certain acceptance - once enacted it should be integrated into the body of customs of the community. Because this is difficult to accomplish, new laws should be introduced or old laws changed only with great reluctance. Only pressing need should lead to innovation:

For in the cases when the improvement would be small, while it is a bad thing to accustom men to repeal the laws lightly, it is clear that some mistakes both of the legislators and of the magistrates should be passed over; for the people will not be benefitted by making an alteration as they will be harmed by becoming accustomed to distrust their rulers (Pol. 1269a15-25).

Customary law is based on the near complete acceptance of long-performed patterns or habits of behaviour; enacted law, consisting of additions or changes of customary law, is based on the habitual acceptance of established political authority (Pol. 1269a). The importance of habitual acceptance explains why laws should not be changed very often, even though many laws may be the result of mistake or oversight. Many changes imply many mistakes. Constant change reflects badly on political authority and undermines the necessary civic trust.

The second distinction which Aristotle makes, which is somewhat similar to that between customary and enacted law, is between written and unwritten law.<sup>15</sup> At first glance, it might appear that enacted law is written and customary law is unwritten, and such is the impression one gets from the

following passage in Barker's translation of the Politics:

This shows that to seek for justice is to seek for a neutral authority; and law is a neutral authority. (We have been speaking hitherto of written rules of law.) But laws resting on unwritten custom are even more sovereign, and concerned with issues of still more sovereign importance, than written laws...(my emphasis).<sup>16</sup>

But Aristotle does not make a clear-cut distinction between written-enacted law and unwritten-customary law. The term 'unwritten custom' does not appear in the passage in question (Pol.1287b4-7). He simply refers to hoi kata ta ethe (those (laws) according to habit or custom).<sup>17</sup> In fact, many customary laws were incorporated in written codes and many written laws had become customary by Aristotle's time (e.g. those of Solon).<sup>18, 19</sup>

The third distinction is between particular (idios) and general or common (koinos) law. Early in the Rhetoric, Aristotle defines these in the following passage:

Let injustice, then be defined as voluntarily causing injury contrary to the law (para ton nomon). Now the law is particular (idios) or general (koinos). By particular, I mean the written law (hon gegrammenon) in accordance with which a state is administered; by general, the unwritten regulations (hosa agrapha) which appear to be universally recognised (Rhet. 1368b).

This passage raises a number of problems. Aristotle seems to identify particular law with written law and general law with unwritten law. Apparently, all laws which are peculiar to one polie must be written and all customs which are not written into law are not laws unless they are also universally recognised. In other words, Aristotle seems to have left out agraphoi nomoi which are peculiar to one polis. However, this omission is accounted for later in the following passage:

Now there are two kinds of laws, particular and general. By particular laws I mean those established by each people in reference to themselves, which again are divided into written (gegrammenon) and unwritten (agraphon); by general laws I mean those based on nature (ton kata physin) (Rhet. 1373b).<sup>20</sup>

Here Aristotle accounts for particular unwritten law. Why is there a difference between the two definitions? This can partly be explained by his use of esto at the beginning of the earlier passage, for the word is used to indicate a merely popular or provisional definition.<sup>21</sup> The earlier

definition was not meant to be complete - why is only a matter for speculation.

The view of law which emerges from Aristotle's discussions of the varieties of law is a broad one. It does not just include positive law, or the acts of legislator, but the customs, written and unwritten, of a community. It includes not just law peculiar to a particular community, but also law which is common to all communities, which would be called by some medieval legalists the ius gentium. These notions of unwritten law and ius gentium have been closely associated with natural law. Did Aristotle hold to a conception of natural law?

#### Natural Law

To date there has been no systematic attempt to determine Aristotle's position regarding natural law. However, the term 'natural law' has often been used to describe his views on justice and the rule of law. Barker, while discussing equity (epieikeia), mentions parenthetically that for Aristotle 'natural justice itself has its origin in natural law.'<sup>22</sup> However, Barker does not explain how natural justice can have its origin in natural law. Elsewhere, he explains that law is natural because it is moral. If I understand Barker correctly, he is arguing that since man fulfills his nature by living virtuously, law is natural because it embodies and encourages the life of virtue. He goes on to say that, for Aristotle, 'the natural character of the law precludes any distinction between what is legally just, and what is naturally just.'<sup>23</sup> Friedrich also attributes a natural law doctrine to Aristotle. Natural laws are principles of justice which are derived from a consideration of human nature. As such, natural law is distinct from positive law fixed in statutes and customary law. He later associates natural law with Aristotle's conception of common law.<sup>24</sup>

Von Leyden has a similar interpretation:

What Aristotle would seem to have in mind above all else here was something like the concept of an unwritten natural law. He thought there might be a law which applies to all men, in all places, and at all times,<sup>25</sup> though perhaps not in all particular circumstances.

In all of Aristotle's available writings, he refers to natural law only twice, in both cases in the first book of the Rhetoric. Although quoted earlier, the first is worth repeating.

Now there are two kinds of laws, particular and general. By particular laws I mean those established by each people in reference to themselves, which again are divided into written (grammenon) and unwritten (agraphon); by general laws I mean those based on nature (ton kata physin) (1373b).

The entire clause koinon de kata physin has been translated by Roberts as 'universal law is the law of nature'.<sup>26</sup> A similar construction is made by Cope.<sup>27</sup> The Freese translation cited earlier uses the construction 'based upon nature', which I believe more closely approximates Aristotle's meaning. The noun physin (nature) is in the accusative case following the preposition kata. The force of the accusative after a preposition denotes the place 'toward which', 'over which', or 'along which' motion takes place. In this case, the preposition kata probably denotes 'conformity with', as with the common Greek phrase kata nomon (according to the law). Under no circumstances could it mean that physis is the source of nomos. Immediately following the passage in question from the Rhetoric, Aristotle writes,

In fact, there is a general idea of just and unjust in accordance with nature (physei koinon dikaion kai adikon), as all men in a manner divine, even if there is neither communication nor agreement between them (Rhet. 1373b).

The reference to justice and injustice physei (by nature) uses the 'instrumental-dative' denoting cause or association. The force of this construction: physei dikaion is that justice has its source in nature. Justice exists prior to any positive human act, such as legislation or acceptance, in contrast to law. Justice exists by nature, law does not. Aristotle is saying that law can be according to nature if it embodies the principles of natural justice. Natural justice is a standard for law. However, natural justice cannot have the force of law until it is embodied in the customs of a community or until enacted.

The other passage where Aristotle connects law with nature also uses the phrase kata physin (Rhet. 1375a). Once again, natural justice is referred to as the standard for law according to nature. Thus, when Barker asserted that natural justice has its basis in natural law, he was reversing the relationship as Aristotle saw it. In Aristotle's view, law according to nature has its basis in natural justice.

Some forms of natural law theory, notably that of St. Thomas Aquinas, made use of a number of Aristotelian concepts. However, Thomas had to add

to these concepts the idea that there is a provident God who will always act in accordance with reason. Reason enables us to know what is just; God's will makes justice law.<sup>28</sup> One problem which all natural law theorists have is how principles of action discovered by reason can also have the binding force of law. There is a qualitative difference in a natural ethical principle which has the form, 'If I am to be happy, I must do...' A natural ethical principle is a conditional proposition which describes the relationship between a universally desired (although often misconceived) end, happiness, and the means for its achievement. Law is not a conditional proposition; obedience is expected. Reason may be a basis for laying down a law, but this is the concern of the legislator. Once a law is made by one who is properly in authority, the reason for the law ceases to be a condition for obedience. Regarding natural law, human reason discovers natural ethical principles. However, by reason of man's belief in a rational God, he can infer that these principles have the binding force of law. The natural law is discovered as a conditional proposition but is inferred to have the nature of law. This inference can easily be made by St. Thomas because of his conception of God, but such an inference is impossible for Aristotle because he did not believe in a provident Deity.

Earlier, I stated that Aristotle's conception of nomos included the idea that for something to be law it had to be either enacted and accepted or just accepted, as with custom. Aristotle's legal ideas have their roots in the Athenian legal tradition, whereas, Aquinas' have their roots in the Roman and Canon Law tradition. However, despite the differences in these two traditions, both Aristotle and St. Thomas could agree that for something to be law some kind of agent (or agents) is (are) required. For Aristotle, man was the only agent capable of making law. Barker is correct when he argues that for Aristotle law is natural because it is necessary for human fulfillment. However, natural law is an existing system of laws which exist by nature, and given Aristotle's conception of law no such system can exist by nature. For St. Thomas, a system of natural laws is possible because of his conception of an agent superior to man who is also the Author of nature.

Despite the fact that Aristotle's legal ideas do not allow one to place him in the natural law tradition, it would not be proper to call him a positivist either because of his insistence upon the moral function of law. Laws may not exist by nature, but the principles guiding the legislative process do. The moral function or end of law, and the means

required to fulfill that function, preclude characterising him as a legal positivist.

#### The Means and End of Law

The function or purpose of law is the good of the members of the polis. Because the members of the polis are men the good with which Aristotle is concerned is the good of man, happiness (eudaimonia).

Now all the various pronouncements of the law aim either at the common interest of all (toi koine sympherontos pesin), or at the interest of a ruling class determined either by excellence (kat' areter) or in some other similar way; so that in one of its senses the term just is applied to anything that produces and preserves the happiness or the component parts of happiness, of the political community (N.E. 1129b14-19).

However, the function of law cannot be fulfilled if it is merely a mutual covenant among citizens to help provide for each others' needs and desires (Pol. 1280b5). Happiness is the result of a life in accordance with virtue and those laws are just which inculcate and encourage virtue in the polis. Yet merely knowing which acts are virtuous is not enough, so the law must do more than merely point out which acts are virtuous (N.E. 1129b20-25; Pol. 1130b23-25).

The idea that law should encourage virtue poses a problem because of Aristotle's conception of virtue. The virtuous man is not merely one who performs virtuous acts. Rather, he is one who acts rightly from an inner disposition. How can law, which can only regulate external acts, encourage a disposition which is an internal state? The key term is 'encourage'. The law cannot make people virtuous, but it can make it easier to be virtuous by two means at its disposal, compulsion and education. Through education, the young should be taught from the beginning that true happiness can be found only by being virtuous (N.E. 1104b12). Early encouragement and exhortation can be used to develop in each individual good habits. Later, the reasons for the virtues can be taught and the proper inner disposition can be acquired through rational conviction (N.E. 1180a29-1180b30). The role of compulsion is more subtle. A man who acts rightly from a fear of punishment is not virtuous and, therefore, not truly happy. Men who act rightly only from fear of punishment will undoubtedly always exist regardless of their education and in such cases compulsion only forces them to behave in an orderly manner to preserve a minimum of peace and order. Aristotle believes that such men will usually be in the majority.

Accordingly we shall need laws to regulate the discipline of adults as well, and in fact the whole life of the people generally; for the many are more amenable to compulsion and punishment than to reason (logos) and to moral ideas (kais) (N.E. 1180a3-5).

However, compulsion, insofar as its function is but to force obedience, represents law unfulfilled, because compulsion is not simply for unvirtuous men. More importantly, compulsion can also be used as an instrument of education to produce virtuous men.

We must therefore by some means secure that the character shall have at the outset a natural affinity for virtue, loving what is noble and hating what is base. And it is difficult to obtain a right education in virtue from youth up without being brought up under right laws; for to live temperately and hardily is not pleasant to most men, especially when young; hence the nurture and exercise of the young should be regulated by law, since temperance and hardiness will not be painful when they have become habitual (N.E. 1179b30-1180a1).

Compulsion is a necessary instrument of education. Children are compelled to act rightly so that through repetition they become accustomed to right action when they mature. Eventually, the good actions become habitual and a permanent part of their adult character.

Law, then, fulfills its nature by performing a hierarchy of functions. The end of political association is for its citizens to live well, that is, to fulfill their natures and achieve happiness by living virtuously. Since the life of virtue requires the proper disposition law cannot provide happiness, but it can make happiness possible by encouraging virtue. Such encouragement means using education to show what the virtues are, how they are to be performed, and, if possible, why they are virtues. To accomplish its purpose, education must use compulsion to force people to practise the virtues in the hope that those forced to act virtuously when young will acquire the virtues as habits as they mature. However, Aristotle is pragmatic enough to realise that at best the law will only be partially successful. For the most part, the law must use force to maintain stability, which is a necessary but not sufficient condition for happiness. Hence the least noble of the law's functions is its most pressing concern.

The major point which emerges from this discussion of the functions

of the law is that although Aristotle is not a natural law theorist, his legal ideas have in common with natural law doctrine an emphasis on the moral function of law. What constitutes the life of virtue is not a creation of positive law but a potentiality inherent in the very nature of man. Aristotle allows that a function of law is to encourage the fulfillment of this potentiality; but he never implies the doctrine at the heart of the natural law tradition - namely that if a precept does not have all the characteristics necessary for such a moral function then the precept is not really law.

#### Other Characteristics of Law

The nomoi of a polis, in the most general sense, included every aspect of its total system or order. 'Law is a form of order (taxis tis), and good law (eunomia) must necessarily mean good order (eutaxian)' (Pol. 1326a30). 'Good law', I would assume, means law which fulfills its function. If so, then an implication of this statement is that Aristotle, in contrast to Aquinas, would not deprive a precept or custom of the designation nomos if it does not fulfill its proper function. Just as a bad man is still a man, so also is a bad law still a law. Thus nomoi, at the very least, means all the statutes and customs which actually make up the way of life of the citizens of a polis.

Such statutes and customs are general statements and practices.

The general rules of justice and law are related to the actions conforming with them as universals (katholou) to particulars (hekasta), for the actions done are many, while each rule or law is one, being universal...Law is always general (ho men nomos katholou pas)... (N.E. 1135a6-37b14).

Thus the law consists of general principles and insofar as it is articulated it consists of general statements. Pronouncements claiming to be laws which deal directly with particular acts are not nomoi but psaphismata, decrees. Generality is an essential characteristic of any law.

Aristotle also draws a connection between nomos and practical wisdom (phronesis) (N.E. 1180a22), which raises the question of whether rules must be based on practical reason to be a laws? In some passages Aristotle comes close to saying that a law by definition is based on reason.

He therefore that recommends that the law shall govern seems to recommend that God and reason alone shall govern, but he that would have men govern adds a wild animal also; for appetite is like a wild animal, and also passion warps the rule even of the best men (Pol. 1287a29-34).

Now Aristotle disagreed with some laws of his own time. Would he say that such laws were reasonable even though wrong? Or would he deny the term 'law' to them? In fact, Aristotle does leave room for the possibility of badly conceived laws. He specifically discusses improperly made laws and he suggests that they should not be sovereign (Pol. 1282b1 and 1286a22). However, he never suggests that these are not really laws or that they should not be obeyed.

The remaining characteristic of law is that it is 'sovereign' (kyrios).

Hence it is clear that when men seek for what is just they seek for what is impartial (to meson); for the law is that which is impartial. Again, customary laws (hoi kata ta ethe) are more sovereign (kyrioterai) and deal with more sovereign matters (peri kyrioteron) than written laws (ton kata grammata nomon) (Pol. 1287b4-8).

Perhaps 'authoritative' would be a better translation of kyrios than 'sovereign'. The point is that law creates obligation. How fundamental the obligation depends upon how fundamental the law. Hence the most fundamental laws, customs, create the highest obligations.

#### Conclusions

According to Aristotle, laws may come into existence either by enactment of a legislator or by a longstanding repeated practice. In either case law requires acceptance. Even enacted law needs the force of custom to be effective.

Law and justice are not identical. The purpose of law is the good of the political association. Insofar as a law fulfills this function it is just. However, it is possible for something to be a law even though it may fall short of the requirements of reason or justice.

The 'gap' between the just and the legal is filled by the introduction of education to habituate people to virtue. The fact that a law is just

cannot ensure its acceptance, and acceptance is an essential characteristic of law. The notion of acceptance was too closely integrated into the very concept of law for Aristotle to ignore. The just could not become law unless there was first a people habituated to accept just law. Only a people properly educated would accept a law because it is just.

Aristotle held to a conception of natural justice but not to a conception of natural law. His views on nature and law do not allow for the possibility of natural law. He bridged the famous gap between nature and convention by showing how law could be in accordance with nature.

Aristotle's legal ideas fit into neither the natural law nor the positivist tradition, but have certain features in common with both. Aristotle and natural law theorists agree on the moral function of law which has its basis in the nature of man. On the other hand, Aristotle would agree with the legal positivists that there can be no law except what men make for themselves. Where law exists, it is the ultimate authority.

#### NOTES

1. J. Walter Jones, The Law and Legal Theory of the Greeks (London: Oxford University Press, 1956), esp. pp. 5-13, and 64-69.
2. Ernest Barker, ed. & trans., The Politics of Aristotle (New York: Oxford University Press, 1975), pp. liv-lv.
3. For an excellent study of Athenian law, see A.R.W. Harrison, The Law of Athens (2 vols; London: Oxford University Press, 1968).
4. For example, see C.J. Friedrich, The Philosophy of Law in Historical Perspective (Chicago: University of Chicago Press, 1963), pp.19-22 and 24-5; Max Hamburger, Morals and Law (New Haven: Yale University Press, 1951) and W. Von Leyden, 'Aristotle and the Concept of Law', Philosophy, 42 (January, 1967), 3-4, 7-8.
5. Ernest Barker, The Political Thought of Plato and Aristotle (New York: Dover Publications, 1959), p. 326. See also Max Salomon Shellen, 'Aristotle and Natural Law', Natural Law Forum, 4 (1959), 72-100.
6. Von Leyden, 'Aristotle and the Concept of Law', p. 3; Barker, The Political Thought of Plato and Aristotle, pp. 326-7, and The Politics of Aristotle, p. 366.
7. Anton-Hermann Chroust, 'The Function of Law and Justice in the Ancient World and the Middle Ages', Journal of the History of Ideas, 7 (1946), 299-301.
8. Unless otherwise indicated, the following translations, with the abbreviations used in the citations, will be used: Aristotle, the Art of Rhetoric, John Henry Freese, trans. (Loeb Classical Library; London; Heinemann, 1926) (Rhet); Athenian Constitution, E. Rackham, trans.,

- (Loeb Classical Library, Cambridge: Harvard University Press, 1935) (CA); Nicomachean Ethics, H. Rackham, trans. (Loeb Classical Library; Cambridge: Harvard University Press, 1968) (NE); Politics, H. Rackham trans. (Loeb Classical Library; Cambridge: Harvard University Press, 1967) (Pol).
9. Martin Ostwald, Nomos and the Beginnings of the Athenian Democracy (London: Oxford University Press, 1969) pp. 9-11.
  10. Ibid., p.55.
  11. See Pol. 1273b27-1274b28; N.E. 1137b17, 1103b3, 1102a11, 1128a31, 1155a23, 1113b23.
  12. Shellens, 'Aristotle on Natural Law', p.74.
  13. Barker, The Politics of Aristotle, pp. 1v and 367
  14. CA, viii, 28 (nomon etheke); xxii, 16 (nomon etheken); vi, 3; vii, 1; xxix, 17 (nomous etheke); x, 1 (en tois nomois tauta theinai); see also N.E. 1129b25 (ho keimeos orthos).
  15. Rhet. 1368b, 1373b, 1374b, 1375b; N.E. 1162b22, 1180b3; Pol. 1287b5; 1269a3-10.
  16. Barker, The Politics of Aristotle, p. 147.
  17. The whole passage is as follows: Hosti delen hoti to dikain zetountes to meson zetousin no gar nomos to meson. eti kyrioteroi kai peri kyrioteron ton kata physin nomon hoi kata ta ethe eison.
  18. Jones, The Law and Legal Theory of the Greeks, pp.102-115.
  19. See CA v-xiv.
  20. The significance of this phrase ton kata physin will be discussed below.
  21. See Edward Meredith Cope (ed.), The Rhetoric of Aristotle with a Commentary, revised by John Edwin Sandys (3 vols.; Cambridge University Press, 1877), I, 182.
  22. Barker, The Politics of Aristotle, p. 366.
  23. Barker, The Political Thought of Plato and Aristotle, p.326. On its face, this statement is clearly false, since Aristotle distinguishes between natural and conventional justice. N.E. 1134b19-23.
  24. C. J. Friedrich, The Philosophy of Law in Historical Perspective, p.22.
  25. Von Leyder, 'Aristotle and the Concept of Law', p.3.
  26. Aristotle, Rhetorica, trans. W. Rhys Roberts, in Richard McKeon, (ed.), The Basic Works of Aristotle (New York: Random House, 1966), p.1370.
  27. Cope, The Rhetoric of Aristotle, I, 246, n. 45.
  28. See Otto Gierke, Political Theories of the Middle Age, trans. F. W. Maitland (Boston: Beacon Press, 1960), p.147 and H. A. Romaner, The Natural Law, trans. Thomas R. Hanley (St. Louis: Herder, 1947), p.198.