

subtopic

## Aristotle

### ARISTOTLE, NATURAL LAW, and the FOUNDERS

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Aristotle did affirm the existence of a “law of nature,” but he was admired by and influenced the [American Founders](#) more for his related views on republican government and the rule of law.

Some of the Founders—notably, John Adams and [James Wilson](#)—refer frequently to Aristotle and show a deep acquaintance with his *Politics*. Moreover, Aristotle generally enjoyed an authority among the Founders like that which he had exercised over the learned world for centuries beforehand. A passage from Wilson’s [treatise](#), *Of the General Principles of Law and Obligation*, is illustrative:

“Why should a few received authors stand up like Hercules’s columns, beyond which there should be no sailing or discovery?” –To Aristotle, more than to any other writer, either ancient or modern, this expostulation is strictly applicable. Hear what the learned [Grotius](#) says on this subject. “Among philosophers, Aristotle deservedly holds the chief place, whether you consider his method of treating subjects, or the acuteness of his distinctions, or the weight of his reasons.”<sup>[1]</sup>

Aristotle was regularly included by the Founders in their lists of reliable and authoritative political philosophers. When asked once what was the philosophy underlying the [Declaration of Independence](#), Jefferson replied that: “All its authority rests ... on the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, [Cicero](#), [Locke](#), [Sidney](#), &c.”<sup>[2]</sup> John Adams similarly wrote that the principles of the American Revolution “are the principles of Aristotle and [Plato](#), of Livy and Cicero, and Sidney, Harrington, and Locke; the principles of nature and eternal reason; the principles on which the whole government over us now stands.”<sup>[3]</sup>

Indeed, Aristotle was credited as the original source for many doctrines generally affirmed by the Founders, including the following five:

1. government should govern for the good of the people, not for the good of those in power;
2. there is a natural aristocracy, and skilled statecraft arranges things so that this element acquires authority, or, failing that, blends democratic and oligarchic influences in society to approximate to that outcome;
3. mixed regimes are better than pure regimes, because they are more stable;
4. the best form of government in nearly all circumstances involves the balancing of aspects of all three pure regimes (kingship, aristocracy, and timocracy);
5. a pure democracy can easily turn into a tyranny of the majority.

However, the teaching of Aristotle that was most admired by the Founders was his insistence upon the rule of law, especially as stated in a passage from the *Politics*, where law is said to be reason or intelligence (*nous*), free from passion, and, as it were, the governance of God.<sup>[4]</sup> Their imagination in this regard seems to have been captured by several passages that indicate a conception of the institution of the rule of law as akin to the institution of the Kingdom of God. As James Harrington wrote:

But that we may observe a little farther how the Heathen politicians have written, not only out of nature, but as it were out of Scripture: as in the commonwealth of Israel God is said to have been king; so the

commonwealth where the law is king, is said by Aristotle to be the kingdom of God. And where by the lusts or passions of men a power is set above that of the law deriving from reason, which is the dictate of God, God in that sense is rejected or depos'd that he should not reign over them, as he was in Israel.<sup>[5]</sup>

Similarly, Algernon Sidney argued:

The most generous nations have above all things sought to avoid this evil [of being governed by the mere will of a man]: and the virtue, wisdom and generosity of each may be discern'd by the right fixing of the rule that must be the guide of every man's life, and so constituting their magistracy that it may be duly observed. Such as have attained to this perfection, have always flourished in virtue and happiness: They are, as Aristotle says, governed by God, rather than by men, whilst those who subjected themselves to the will of a man were governed by a beast.<sup>[6]</sup>

One finds John Adams, for instance, echoing Harrington and Sidney, but attributing the thought to Aristotle: "Aristotle says, that 'a government where the laws alone should prevail, would be the kingdom of God.' This indeed shows that this great philosopher had much admiration of such a government."<sup>[7]</sup>

By the "rule of law," Adams and the Founders did not understand the mere consistency or predictability of law and procedure (although it would necessarily include that); rather, the rule of law involved also the consistency and harmony of human law with the "law of nature"—which is why they could so easily conceive of the rule of law as being the rule of God.

Here we find a deeper relationship between the Founders and Aristotle, since they conceived of his political philosophy as sound precisely because, as they believed, it was drawn from nature and based on the "principles of nature and of eternal reason." The spirit of this way of looking at Aristotle may be seen in a passage from Harrington, who is arguing against the view of [Hobbes](#)—similar to that of most commentators on Aristotle in our own day—that Aristotle in his political and ethical theory is doing no more than systematizing the received and conventional opinions of his time. Harrington replies:

for Mr. *Hobbes* to say, *Aristotle* and *Cicero* wrote not the rules of their politicks from the principles of nature, but transcribed them into their book out of the practice of their own commonwealths, is as if a man should say of the famous *Harvey*, that he transcribed his circulation of the blood, not out of the principles of nature, but out of the anatomy of this or that body.<sup>[8]</sup>

In other words, Aristotle of course had to rely upon particular examples from his own time and experience, and yet this did not preclude his discerning, from these examples, general principles based upon the nature of things.

So much for how the Founders viewed Aristotle: but what did Aristotle himself think? In particular, were the Founders correct, and did Aristotle view himself the way the Founders viewed him? To answer these questions, it is necessary to explain what Aristotle meant by "law of nature" and "natural justice."

By a "claim of justice" (a claim about *to dikaion*, "what is just"), Aristotle understood a statement about what should be the case, which was justified by appeal to some standard of equality: "this should be so, because if it is so, then there will be equality of such-and-such kind." He believed that there were different types of equality, relevant to different types of claims of justice, and that, most commonly, claims of justice would appropriately appeal to the standard he called "proportionate equality."<sup>[9]</sup> For instance, you supply 80% of the capital for a business, and I supply 20%, and therefore (one might claim, appealing to proportionate equality) we should share in the profits of the business in the same proportion. We remain equal relative to each other if we do so share in the profits (it is claimed), but become unequal if we do not.

It can be seen that in "proportionate equality," something serves as the basis of the claim—there is some *reason* why we think that things should be allotted or assigned in proportion to some other thing, and typically this reason goes beyond the mere fact that something was decided or previously agreed

to. For instance, in the example, when the profits are to be shared, and the partners share those profits in the proportion indicated, they might be able to explain this by appeal to an earlier agreement, if they had been explicit about it in forming the partnership: “We’ll split the profits 80/20, as originally agreed.” But it can happen that the partners never made any explicit agreement, and then the reasonability of such a distribution has to stand on its own. Or even if they had agreed to an 80/20 distribution, there was a reason why this had originally seemed “fair” to them, and that it was something that they thought they could agree to and abide by. In such cases what people are really relying upon is some principle about the “nature” of work or of a business—they might, for instance, conceive of capital as being like effort or power, and think that people should share in the profits in proportion to the effort they expend.

By “natural justice,” Aristotle understood an equality (typically a proportionate equality) that would be justified, ultimately, by appeal to something other than an agreement or decision; it is an assignment or allotment that is justified by appeal, somehow, to “the nature of things” involved in a relationship or transaction. In contrast, “conventional justice” is an equality justified, ultimately, by appeal to nothing more than a decision or agreement.

For Aristotle there is a very close connection between justice and law, so much so that he is willing to say that the general virtue of justice may be alternatively described as “lawfulness.”<sup>[10]</sup> The opposition commonly drawn between “natural justice” (or “natural right”) and “natural law” is therefore unwarranted in the case of Aristotle.<sup>[11]</sup> The reason is not difficult to see: particular judgments about what is equal (“just”) immediately imply corresponding generalizations, since there would be no reason why similar cases should not be decided in the same way. That *this* allotment should be 80/20 implies that similar cases should have similar allotments. Thus, on Aristotelian terms, a law is “by nature” if the equality which it aims to ensure is such that it is justified by appeal to something other than an agreement or decision. Similarly a law would be “contrary to nature” if it forbade equalities which a law which was “by nature” would aim to effect, or if it commanded corresponding inequalities.

Not that this notion of “by nature” is trivial or irrelevant. In Aristotle’s political thought, for instance, it serves as the basis for his criticism of Platonic communism<sup>[12]</sup>: communism is against nature because it forbids distributions of the sort that one would regard as equal if one were attending to the nature of the beings involved, since by nature we should favor more what is more akin (*oikeion*) to us. Again, because of the equality by nature of human beings, if there is no individual in a commonwealth so distinguished in virtue that it would be best to confer kingly authority upon him, then the government which best accords with the nature of the beings who compose a commonwealth would be one in which citizens took turns in ruling and being ruled.<sup>[13]</sup>

By a “law of nature,” then, Aristotle does not mean statutes, or a system of rules, discernible by intellectual perception; rather, what he means are recurring equalities or inequalities in the nature of things, which, he considers, serve to justify general claims involving the distribution of things and actions. Three important things should be noted about a “law of nature” in this sense:

First, Aristotle thinks that a “law of nature” may appropriately be invoked as grounds for disobeying a human law which contravenes it, since the “law of nature” has the higher authority. This is clear from his favorable reference to the *Antigone* of Sophocles and his willingness to contemplate jury nullification in the *Rhetoric*.<sup>[14]</sup> It is unclear from the text on what grounds Aristotle held that a law of nature has the higher authority; but we may speculate that his view here is connected with his views expressed elsewhere that the ultimate causes of nature are divine, and that human artifice should assist or complete nature rather than subvert it.<sup>[15]</sup>

Second, it may reasonably be wondered why, if something is a “law of nature,” it is not recognized and followed universally by human beings. In fact no prescription seems to be acknowledged by all cultures and times, not even “Do not murder.” The puzzling language of the *Nicomachean Ethics*, which defines nature as something that has the same “force” or “influence” in all times and places, suggests how Aristotle would deal with this problem.<sup>[16]</sup> His view seems to be that nature, for its part, invariably suggests to us the appropriateness of framing certain precepts (viz. concerning what is “just by

nature”), but we, for our part, need to have the appropriate sensitivity to this influence. For example, on this view we frame a precept of the form, “Do not murder,” and say that this is just by nature, in view of our being sensitive to the “nearness and dearness” of each human being to every other.<sup>[17]</sup> This nearness and dearness is an objective reality about our similarity and potential reciprocal relationships with members of the same kind; yet we may fail to be sensitive to this reality. We do not, of course, merely intellectually perceive that human beings are near and dear to one another; rather, we sense or feel this ourselves, which is to say that we are inclined to regard another’s good as our own good, and we are prepared to act to protect and promote it. Yet it can happen, in some cultures or circumstances, that our sensitivity is suppressed or deformed, and in those unusual conditions the precept “Do not murder” will either not be articulated by us or will fail to have force. In such cases it is not nature that has changed, or the law of nature; nature remains the same, but we have failed to respond adequately to it, through a failure of sensitivity.

Third, it seems to be Aristotle’s view that a “law of nature” or what is “just by nature” never has an effect on our actions without some admixture of the conventional and the arbitrary. No precept is *purely* natural; all precepts are framed with a view to an application to particular circumstances, and for this something arbitrary will be required. Aristotle’s helpful example is of the difference between wholesale and retail measures: in all times and places, people use larger measures in wholesale markets than in retail; they do this in view of the nature of the case—the wholesale market involves a higher-level distribution of goods for sale, and therefore it calls for larger measures—and in this sense “by nature wholesale measures are larger than retail;” nonetheless, *which* measures to use at each level is purely a matter of convention: e.g. kilograms rather than pounds, and grams rather than ounces.

In general, the definition of “natural” found in the *Nicomachean Ethics*, V.7 shows the wrongness of a common view about Aristotle and natural law: It is often claimed that Aristotle could have had no notion of a “natural law,” because he was still philosophizing in a context, evident in the Sophistic Movement, in which “nature” (*phusis*) and “law” (*nomos*) were contrasted and held to be incompatible. Only with the supposition of a God who is both a lawgiver and the governor of nature—a supposition which became common after the rise of Christianity—did it make sense to conceive of a “natural law” (or so the objection goes). But the passage from the *Rhetoric*, I.13 shows that Aristotle had no difficulty conceiving of a natural law or using language along those lines, and we have explained what he meant by this and how it was open to him to think in this way. What is additionally interesting about the discussion of what is “natural” is that it shows Aristotle arguing that, far from being incompatible, the natural and the conventional are almost indistinguishably intertwined in human practical reasoning and law; in fact, this is a distinguishing characteristic for Aristotle of distinctively human as compared with divine justice.

Today natural law theories are sometimes taken to be distinctive insofar as they attempt to provide for and justify the claims that (i) human law in certain circumstances is null and void (*lex iniusta non est lex*) and also that (ii) there are actions which, because of the kind of action that they are, are never to be done whatever the consequences (so-called “moral absolutes” or actions *per se malum*). The two aspects are related: the way in which a precept most commonly gets dispensed with is by being overruled; thus a precept of the highest authority about a sufficiently plain matter of equality or inequality, one would think, would lack exceptions.

Aristotle seems to be disposed to recognize “moral absolutes” corresponding to laws of nature: for instance, given his sympathies with Antigone, one would think he would regard “bury one’s blood relation” as that sort of absolute prescription, to be followed except when it is impossible to do so. Also, it is interesting to note that Grotius, influential on the Founders in their understanding of Aristotle, similarly interpreted a passage in Aristotle’s *Ethics*<sup>[18]</sup>:

the Law of Nature is so unalterable, that God himself cannot change it. For tho’ the Power of God be infinite, yet we may say, that there are some Things to which this infinite Power does not extend, because they cannot be expressed by Propositions that contain any Sense, but manifestly imply a Contradiction. For Instance then, as God himself cannot effect, that twice two should not be four; so

neither can he, that what is intrinsically Evil should not be Evil. And this is Aristotle's Meaning, when he says, ἔνια ἐυθὺς ὀνόμασται, &c. Some Things are no sooner mentioned than we discover Depravity in them. For as the Being and Essence of Things after they exist, depend not upon any other, so neither do the Properties which necessarily follow that Being and Essence. Now such is the Evil of some Actions, compared with a Nature guided by right Reason. Therefore God suffers himself to be judged of according to this Rule.<sup>[19]</sup>

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[1] Wilson, *Of the General Principles of Law and Obligation*, I.ii.2266.

[2] Jefferson, *Letter to Henry Lee, May 8, 1825*.

[3] Adams, *Novanglus*, No. 1.

[4] Please refer to *Politics*, [III.16, 1287a8-32 \(III.16\)](#) in the Primary Source Documents section of this website.

[5] Harrington, *Oceana*, The Preliminaries.

[6] Sidney, *Discourses concerning Government*, section 15.

[7] Adams, *Works on Government*, ch. IV, "Opinions of Philosophers."

[8] *Oceana*, Politicaster.

[9] *Nicomachean Ethics* V.2.

[10] see *Nicomachean Ethics*, V.1

[11] See e.g. Richard Tuck, *Natural Rights Theories*, Cambridge, CUP 1982.

[12] See *Politics*, II.

[13] *Politics*, III.10-11.

[14] Please refer to the selections of the [Rhetoric, I.13, 1373b2-17](#) and [I.15, 1375a25-b8](#), which reference *Antigone* and jury nullification respectively. They can be found in the Primary Source Documents section of this website.

[15] See *Physics*, II.8.

[16] Please refer to *Nicomachean Ethics*, [V.7, 1134b19-1135a5](#) in the Primary Source Documents section of this website.

[17] See *Nicomachean Ethics*, VIII.1.

[18] See *Nicomachean Ethics*, II.6, 1107a8-17.

[19] Hugo Grotius, *The Rights of War and Peace*, Vol. 1, Chapter I: "What War is, and what Right is."

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