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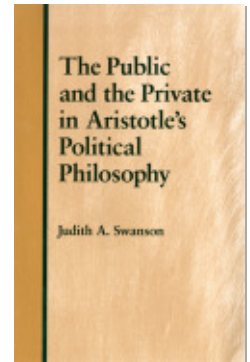
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PRESERVATIVE LAW: ORDERING THE REGIME

Like the household and the economy, laws according to Aristotle ought to serve both a utilitarian function and, if possible, virtue. A city cannot be good or aspire to goodness unless it lasts, so the foremost aim of laws must be to preserve a city. In this chapter I discuss the sorts of laws or legal provisions that must be present in any city for it to last.

PRESERVING THE PRIVATE

The central teaching in Aristotle's discussion of indispensable laws is that a city cannot last without securing order. Although that teaching may be obvious to all but proponents of anarchy, what securing order requires is not always accepted or understood. According to Aristotle, order requires cultivating habits in human beings, because not all human beings respond to argument, living as passion directs (*NE* 1179b23–1180a5). By embodying reason and either the promise of reward or the threat of punishment, laws have the power to cultivate habits, in effect judging for individuals. What is more, laws should cultivate not only public habits but private habits, habits that would seem not to bear on a city (*NE* 1180a2–4). Not always understood is the significance of Aristotle's advocacy of laws that embody reason. If the habits laws encourage are reasonable, then the thinking person is able to understand the rationale for the conduct laws desire. For such a person, laws are

not so much a substitution for his judgment as a great convenience or “salvation” in that they save him the trouble of always choosing conduct (*Pol* 1310a34–36). In any case, the aim of law should be to render everyone—the thoughtful and the thoughtless, the rulers and the ruled, the minority and the majority—supportive of the regime, for anyone might be the source of its destruction (*Pol* 1294b36–40, 1337a14–17).

Also not appreciated is that Aristotle maintains that laws should require individuals to exercise their own judgment over many matters of conduct, public and private. Indeed, the aim of the rule of law is not to command the performance of substantive actions but to stipulate subscription to the qualitative conditions of civil association.¹ Contrary to Hannah Arendt’s interpretation, legislators are not architects whose aim it is to control or preclude all significant political action but educators whose aim it is to encourage a way of life.² Laws cannot fabricate that way of life because they cannot make persons choose correctly. They can only try to make them understand the benefit or virtue of certain choices. As Aristotle says, human beings can only “become good *through* laws [*dia nomōn*]” (*NE* 1180b25). Accordingly, he believes that the excellence of the citizens, not simply of the laws, determines the excellence of a regime (*Pol* 1332a33–35).

¹ As Michael Oakeshott explains in “The Rule of Law,” in *On History and Other Essays* (Oxford: Basil Blackwell, 1983), 129.

² Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), 194–98, 223–30. See also my critique of Richard Bodéüs’s interpretation in the Appendix, “Premises of Interpretation.” Aristotle makes this point also in the last chapter of Book II of the *Politics*, where he distinguishes between legislators who were “craftsmen of laws only,” such as Draco, Pittacus, and Androdamas of Rhegium, and those brought about “a regime as well,” such as Lycurgus and Solon (1273b32–33). The difference between the two groups is not, as might be thought, that the first merely added laws to existing regimes whereas the second founded wholly new regimes; both groups evidently relied on existing provisions (1273b41–1274a1, b15–24). (This stands as evidence, of which more follows in this chapter, that Aristotle does not regard legislators, even such celebrated ones as Solon, as founders of new modes and orders as did Machiavelli.) The difference is rather, that the laws of Draco, Pittacus, and Androdamas only prohibited bad actions rather than encouraged good conduct and government. Aristotle praises Solon’s legislation, and although he is not uncritical of the Spartan way of life, his point is to contrast the two ways of legislating and to proclaim in favor of bringing about a way of life. In doing so he is criticizing, as he does elsewhere, the liberal view according to which a regime is reducible to a covenant. Rule by *lex* or contemporary legislative acts that are merely legal in intention and scope can achieve only a rights-based alliance; by contrast, rule by *nomos* aspires to bring about a just and good way of life; see *The Politics of Aristotle*, trans. Ernest Barker (Oxford: Clarendon, 1948), lxxi–lxxii.

THE RULE OF LAW VERSUS THE RULE OF MEN

If Aristotle deems certain sorts of law or legal provision necessary to the existence of any city, then it seems that he must deem the rule of at least those laws superior to the rule of men. In fact, his debate over the question of whether laws or men should rule supports that conclusion (*Pol* 1286a7–24, 1287a16–b26). The debate is indeed of less interest for its unsurprising general conclusion—that both laws and men should rule—than for its finding about the laws that should rule.

The central points of the debate are as follows. The main advantage of rule by men is that men can deliberate over particular cases; its main disadvantage is that self-interest, prejudice, or ambition may influence deliberation. The main advantage of rule by law is that laws are impartial; its main disadvantage is that laws cannot judge individual cases. Aristotle raises a couple of red herrings to make very clear the actual advantage of each sort of rule, which in turn persuades us of his conclusion.³ A political order needs both the discretionary ability of men and the impartiality of laws, because the universal is not just in all cases and men are not always impartial. What is more, laws and men can rule cooperatively only if the men are more lawlike and the laws more like men: justice requires reasonable men and flexible laws (*Pol* 1282b1–6, 1287a25–27, b5–8, 25–26, 1292a32–34).

This brings us to what is really of interest in the debate. Aristotle does not conclude simply that laws should rule along with men, but that only a certain kind of law should be superior to the rule of men. Laws that a regime cannot persist without should not be replaced by the rule of men. They should, however, be able to be complemented

³ First, he says in effect that, although one might think that an advantage of rule by men is their ability to address difficult matters of justice, if laws cannot address difficult matters, then neither can a human being (*Pol* 1287a23–25). This observation reminds us that men make laws, but the point is that we should not confuse the ability to judge particulars with the ability to judge difficult matters. When measured by the latter, men are no better than laws. Second, one might think that an advantage of law is that it can oversee many matters at once; but Aristotle suggests that several persons could do so (*Pol* 1287b8–9). The law-versus-men debate thus leads to a debate over whether the rule of one or of a plurality is more choiceworthy, a debate discussed later in this chapter. For now, it suffices to say that, on balance, Aristotle argues that the rule of some is safer than the rule of one. He thereby puts to rest the thought that law is advantageous because of the scope of matters it can address.

by the rule of men—sufficiently flexible so as to be tailored to the particular conditions of a regime. These laws might be thought of as constitutional laws that could be embodied in a document.

In Chapter 6, I investigate the “reasonable men” that should rule along with law and how, apart from habituation by preservative or constitutional laws, Aristotle thinks they can become reasonable.

THE RULE OF LAW

To see that Aristotle means by ‘the rule of law’ the rule of preservative laws, one must begin with the law-versus-men debate in the *Politics* and then draw on the *Nicomachean Ethics*, *Metaphysics*, and *Rhetoric*. Aristotle introduces the question of whether law or men should rule with the paradox that passion or prejudice may permeate law; law may be oligarchic or democratic, for example (*Pol* 1281a34–38). In his continuing discussion, he completes the paradox. Law can permeate or influence men in two ways. A man may hold law or a general principle in his mind or may be habituated to the spirit of the laws of his regime (1286a16–17, 1287a25, b25–26). Since law may be impassioned, that habituation may not be wholly desirable. Law may, however, also be dispassionate (1286a17–19, 1287a28–30, 32, b4–5). With this claim, Aristotle clarifies the debate without eliminating the paradox. The rule of law is distinct from the rule of men insofar as it is good law. Aristotle does not need to make his definition of law explicit because both *nomos* and *dikē*, like “law” and “justice,” connote rightness.⁴ Nonetheless, by the fourth century B.C. the primary sense of *nomos* was “written statute”; like “law” for us, *nomos* had a primarily positivist connotation.⁵ Aristotle therefore treats the difference between law and justice,⁶ and therewith that between good and bad law, in the *Nicomachean Ethics*.

Aristotle’s discussion of natural and legal justice indicates how laws can be impartial even though they are necessarily made by men who are necessarily subject to desire or spiritedness (*Pol*

⁴ *Politics*, trans. Barker, lxxi.

⁵ See H. J. Wolff, “‘Normenkontrolle’ und Gesetzesbegriff in der attischen Demokratie,” *Sitzungsberichte der Heidelberger Akademie der Wissenschaften, philosophisch-historische Klasse*, no. 2 (Heidelberg: Jahrgang, 1970), 68–76.

⁶ See also *Politics*, trans. Barker, lxxi.

1286a19–20, 1287a31–32). Being formulated by men, laws may derive from either their passions or their intellect. Insofar as they derive from intellect or knowledge, they derive from what is universal and unchanging (*NE* V.7, 1180a21–22, b20–22, 25–27, 1141a7–8, 21–25; *Met* 1074b26–28; *Pol* 1332a31–32).⁷ Nothing can guarantee that men will formulate laws objectively, but the activity of law-making is conducive to their doing so. First, it is a slow process, allowing time for reflection; unlike commands, laws are not issued on the spur of the moment. Second, because laws apply not to present particular cases but to a category of cases in the future, “love, hate, or personal interest” is less likely, and “the truth” is more likely, to influence their formulation (*Rh* I.1.7). Third and most important, legislators formulate laws from “laws resting on custom” or long-standing precedent. These serve as the political conduit of natural law (making universals accessible to the non-noetic) insofar as they are devoid of mere prejudice or opinion.

The debate in Book III of the *Politics* over whether law or men should rule does not, then, weigh rule by any sort of positive law against rule by discretion; it weighs rule by a particular kind of positive law, law based on universal or natural law, against rule by discretion. Further evidence for this claim is as follows. Aristotle declares toward the end of the debate that “laws resting on customs are more authoritative, and deal with more authoritative matters, than laws resting on writings; so even if it is safer for a human being to rule than laws resting on writings, this is not the case for laws resting on custom” (1287b5–8). What are customs (*ta ethē*) according to Aristotle? In the *Rhetoric*, he observes that there are two sorts of laws, particular and general. In one place he states, “By particular, I mean the written law in accordance with which a city is administered; by general, the unwritten laws which appear to be universally recognized” (*Rh* I.10.3). Particular appear to correspond with written and general with unwritten laws, or more precisely with unwritten, universally recognized, laws—leaving open the possibility that there are unwritten, not universally recognized laws—though it is not clear whether Aristotle would call such laws particular or general. Later, he clarifies himself: “By particular laws I mean those established by each people in reference to themselves, which again are divided into written and unwritten; by

⁷ See also *ibid.*, 366.

general laws I mean those based upon nature" (*Rh* I.10.3). But if general laws are universally recognized unwritten laws, then they must form part of every particular community's unwritten laws. Unwritten laws include both universally recognized laws, laws based on nature, and the unwritten rules of a particular community.⁸ Natural law and custom must somehow be fused.

Testimony to the claim that Aristotle believes natural law and custom intertwine is his declaration that a city cannot exist without attending to "the divine" and listing this need, in the same sentence, as both "first" and "fifth" among a city's needs (*Pol* 1328b2–3, 11–12, 1322b31). This declaration makes sense if one invokes two meanings of 'the divine.' A city cannot last unless it heeds the naturally divine precepts, which can be known through reason, and the conventionally divine precepts, which can be known through myths (*NE* 1178b21–23, *Met* 1074b1–14). A city should above all abide by the natural truths. The natural truths, however, reveal paradoxically that human beings need other truths, or piety. Thus, reason or natural law conveys the need for customs.

Although natural law teaches the *need* for customs, customs may or may not particularize natural truths. Customs may be practices people have simply opined to be good (such as a Greek one that men should carry weapons and purchase their wives) or they may be practices people have come to know to be good, expressing natural precepts (for example, that a society cannot exist without rulers and ruled). "Laws resting on customs are more authoritative . . . than those resting on writings" (or contemporary legislation) (*Pol* 1287b5–6) because they are more likely to express natural precepts. Natural precepts are precepts societies cannot last long without heeding; they have therefore already been discovered and become embodied in customs. This implies that legislators should sort out the truly good customary laws from the others. They can go about this by examining "collections of laws and political systems," seeking out those laws that derive from custom or that appear to be ancient and, of those, the laws that are

⁸ As Martin Ostwald observes, the meaning of *agraphoi nomoi* (unwritten laws) varies according to context in Aristotle's works, referring to both particular and general moral norms. In fact, Ostwald concludes from his study of the phrase in Greek literature that it has no one meaning, referring in various contexts to ordinances sanctioned by the gods or nature, eternal or local moral codes, social pressures, or ritual regulations ("Was There a Concept *agraphos nomos* in Classical Greece?" in *Exegesis and Argument: Studies in Greek Philosophy Presented to Gregory Vlastos*, ed. E. N. Lee, A. P. D. Mourelatos, and R. M. Rorty [Assen: Van Gorcum, 1973], 101–3).

common to all political systems. Thus, they should seek out neither simply ancient laws, nor those that are simply widespread, but those that are both ancient and widespread—that have stood the test of time and circumstance (*NE* 1180b20–22, 1181b6–9; *Rh* I.4.13).

Such a search yields two results. Legislators discover all the laws or legal provisions that are necessary for a regime to exist; more precisely, as Aristotle says, they find embodied in ancient, widespread laws what has already been discovered and rediscovered an infinite number of times (*Pol* 1329b25–34). In addition, they see the many ways these fundamental laws can be tailored and enacted to suit various circumstances. In sum, by familiarizing themselves with traditional constitutional laws, legislators can find the measures that will keep their own regime in existence for the longest time possible (*Pol* 1288b28–30).

Aristotle therefore clearly opposes the belief, held by the creatively-dressed Hippodamus, that innovation is politically salutary (*Pol* 1267b22–1268a14). From the progressive's or rationalist's point of view, new ideas are essential to political progress, and old ideas impede it; the political solution requires a tabula rasa. To look to or rely on tradition for answers to the political problem constitutes a failure of imagination or of creative effort.⁹ In contrast, according to Aristotle, politics calls not for imagination but for prudence, the ability to detect what works. Indeed, a regime that arises "directly out of those that exist" (*Pol* 1289a1–4) is more likely than a new one to be just and to last.¹⁰

⁹ For a critique of political rationalism, see Michael Oakshott, "Rationalism in Politics," in *Rationalism in Politics and Other Essays* (London: Methuen, 1962), 1–36.

¹⁰ As Eric Voegelin explains, because law-making cannot alter given material conditions, "the lawgiver's nomothetic art will be oriented toward perfect actualization but concretely he must be satisfied with the best he can do. . . . Politics as a nomothetic science, however, did not have the task of transforming the imperfect forms into the best form. On the contrary, any such attempt was rejected as it would only lead to disturbances and revolutions. The perverse forms were to be accepted as they existed historically; and the lawgiver's art should only minimize their evils in order to preserve and stabilize them. . . . the nomothetic therapy seems to have no other purpose than to make the perverse form as durable as possible"; *Plato and Aristotle*, vol. 3, *Order and History* (Baton Rouge: Louisiana State University Press, 1957), 324, 358–59. Clarifying Aristotle's position, P. A. Vander Waerdt explains that legislators should be guided by a "double teleology"—preservation and the good life; see "The Political Intention of Aristotle's Moral Philosophy," *Ancient Philosophy* 5, no. 1 (1985), 79, 87–88. Voegelin merely emphasizes that in practice preservation must be the foremost legislative aim or that "perfection must be understood in relation to the range of action of a lawgiver" (*Plato and Aristotle*, 323). See also my discussion of Pierre Pellegrin's views in the Appendix, "The Composition of Aristotle's *Politics*," pp. 224–26.

ARISTOTLE'S ARGUMENT AGAINST CHANGING
PATRIOI NOMOI

Aristotle gives several arguments against overriding traditional laws (*patrioi nomoi*) (*Pol* 1268b26–1269a27)—laws resting on custom.¹¹ As usual, he presents his arguments dialectically, in this

¹¹ Aristotle's arguments may be understood to be commentary on the revision of the Athenian laws, completed in 403/2 B.C., which involved a debate over resurrecting ancestral laws. The revision incorporated some *patrioi nomoi* but declared others invalid; see Douglas M. MacDowell, *The Law in Classical Athens* (London: Thames and Hudson, 1978), 47–48; Martin Ostwald, *From Popular Sovereignty to the Sovereignty of Law: Law, Society, and Politics in Fifth-Century Athens* (Berkeley: University of California Press, 1986), 165–67, 370–72, 406–16, 514–15. The *patrioi nomoi* were various sorts of laws—religious, secular, written, and unwritten—but parties to the debate focused on the ancestral constitutions of Solon and Cleisthenes; see *AC* 29.3; Ostwald, “Was There a Concept *agraphos nomos*?” 90–91, and *From Popular Sovereignty*, 146, 163–68, 514; MacDowell, *Law in Classical Athens*, 192, 194.

There was disagreement as to whether those ancient lawgivers had populist intentions. The populists (*dēmotikoi*) (who prevailed, instituting the regime which was still in existence at the time of Aristotle's writing) appealed to the ancient constitutions to justify the continuation of popular sovereignty. Others, led by Theramenes, appealed to them to remedy what they regarded as the populist extremism of the late fifth century. Still others, though desiring oligarchy and thus the demise of populism, blamed Solon for the extreme democracy. Aristotle explains in the *Politics* (II.12) that populists and oligarchs (apparently both those party to the debate and those among his contemporaries) misinterpret the ancestral constitutions. Addressing the populists, he explains that Solon did not promote populism. Popular suffrage, which should not be confused with allowing the people to hold office, existed before his time; he only continued it. Furthermore, he extended only judicial power to the people; that is, he believed that the people ought to have only the power to elect eligible candidates to office and access to jury seats by way of a voluntary lottery. As Aristotle says, paraphrasing Solon himself, Solon granted the people “only the necessary minimum of power.” Aristotle goes on to explain that it was the successors of Solon, the demagogues Ephialtes and Pericles, who increased the power of the people by perverting the Solonian constitution—for example, by reducing the powers of the oligarchic Areopagus and paying the people for jury service, thus encouraging the poor to volunteer for it. By later approving of Solon's legislation and even ranking him among the best legislators (*Pol* 1281b21–1282a41, 1318b27–32, 1296a18–19), Aristotle confirms his own views and his allegiance. He too thinks that Athenian democracy is too populist, but he criticizes oligarchs for blaming Solon and for not appreciating that Solon's laws promote the leadership of notables. See *Politics*, trans. Barker, 88 n. 1, 380–81; *The Politics of Aristotle*, vol. 2, ed. W. L. Newman (New York: Arno Press, 1973), 372–74, notes on 1273b27, 35, 39; Ostwald, *From Popular Sovereignty*, 370–72, 469; *Aristotle: The Politics*, trans. Carnes Lord (Chicago: University of Chicago Press, 1984), 253 n. 98.

The point of this digression is to show that Aristotle's arguments against changing *patrioi nomoi* are consistent with and supportive of his critique of democracy and his understanding of polity (discussed later in the chapter), and to show that, although those debating the revision of the laws may have appealed to *patrioi nomoi* not in order to find historical truth but to promote their own political programs

case presenting first and as persuasively as possible arguments in favor of changing long-standing laws.

The first argument is that, since arts and sciences such as medicine have benefited from moving away from traditional practices, so would politics (*Pol* 1268b34–38). As Jacques Brunschwig points out, Aristotle presents this argument in a “quasi-syllogistic way” (p and q , therefore r) rather than as a simple hypothetical implication (if p and q , then r). Thus, Aristotle’s premises are accepted and his argument is contained in the form; hence he announces his conclusion as evident. Aristotle’s second argument is that, “in general, all seek not the traditional [*to patrion*] but the good” (1269a3–4). According to Brunschwig, we should not ignore the force of this statement, which results from its underscoring the proposition with which the *Politics* begins—that the city aims at the supreme good—and from the fact that the adjective “patrios” had a “strong laudatory connotation”; that is, Aristotle’s contemporaries would have found shocking his denouncing the “blind attachment” of conservationists of the past to the past. Third, Aristotle observes that, because it is impossible to codify everything with precision, “it is not best to leave written [laws] unchanged” (1269a8–9). Brunschwig argues that, since Aristotle does not specify the extent of change written laws may require, we must assume that he would sanction any change—minor or profound—as long as it rendered the law more precise. From these three arguments, “it is evident,” Aristotle says, “that some laws must be changed at some times” (1269a12–13).¹²

Next Aristotle presents his arguments against changing laws. First, he explains that a law should not be changed for the sake of effecting only a small improvement, for it would not be worth the consequence of habituating people to the dissolution of laws (*Pol* 1269a15–16). The order law achieves by remaining unchanged

(Ostwald, *From Popular Sovereignty*, 372), Aristotle believes that *patrioi nomoi* do contain such truth; their best or indispensable provisions should be preserved, as Cleitophon (who was a member of Theramenes’ party) recommended (*AC* 29.3). Aristotle concludes that legislators should err on the side of caution, changing *patrioi nomoi* only incrementally if at all. Thus, it might be said that “Aristotle revives the old conception of *thesmos* [the older Greek word for law deriving from a verb meaning ‘to establish permanently’] but rationalises it”; John B. Morrall, *Aristotle* (London: George Allen & Unwin, 1977), 81–82.

¹² “Du mouvement et de l’immobilité de la loi,” *Revue Internationale de Philosophie* 34, no. 133–34 (1980), 512, 522, 523, 527, 540.

compensates for any small sacrifice of justice, because order is a kind or a part of justice. Thus, he points out that "the argument from the example of the arts is false. Change in an art is not like change in law; for law has no strength with respect to obedience apart from habit, and this is not created except over a period of time. Hence the easy alteration of existing laws in favor of new and different ones weakens the power of law itself" (1269a19–24). Since the premise of the earlier syllogism is false, so is its conclusion. Perhaps not altogether by accident, Aristotle thus avoids risking shock to his contemporaries. Last, Aristotle ends the section by raising and at once setting aside two questions: "If [laws] are indeed to be changeable, are all to be, and in every regime? And by anybody, or by whom?" (1269a24–26). That he does not answer these questions here or elsewhere seems to indicate, as Jacqueline de Romilly observes, that they are rhetorical.¹³

Brunschwig insists, however, that leaving the debate on this note gives a dogmatic interpretation to an aporetic text. For, with respect to even these last remarks, Aristotle is not as conservative as he could be. In saying that laws should remain unchanged if a change would effect only a small improvement, for example, he implies that laws should be changed if the change would effect an improvement that is other than small. Brunschwig also points out that, although Aristotle says in this passage that the only way laws can elicit obedience is through habit, he says in Book V that they may do so also through education. The implication is that, because people can understand reasons for laws, they can obey new laws immediately. Finally, countering Romilly's claim that Aristotle ends the passage by setting aside the problem because the answer to it has become obvious, Brunschwig concludes that he sets aside the problem because it cannot be resolved once and for all. The question of whether it is good to change laws must be addressed continually by legislators in every regime. The real question, then, is not whether laws should change, but where, when, and to what extent. For, Brunschwig argues, according to Aristotle there is no natural law; that is, "in refusing to take invariability as a criterion of naturalness . . . Aristotle does not let the distinction between

¹³ *La loi dans la pensée grecque: Des origines à Aristote* (Paris: Société d'Édition "Les Belles Lettres," 1971), 220–25.

nature and law become absorbed in the distinction between rest and movement."¹⁴

A few responses to Brunschwig are in order. First, although in recommending that legislators forgo changing laws just to effect small improvements Aristotle may be implying that they should make changes if great improvements would result, he is not saying that the *changes* should be great. Changes should be made only if a cautious change can bring about a significant improvement (*Pol* 1269a13–14). Second, although Brunschwig is correct to note that laws may elicit obedience by way of education, he does not comment on his own (correct) observation that education through habituation is a necessary condition of living justly. People are not likely to be reasonable without habituation (*Pol* 1253a32–33). Even the best populace should be habituated (*Pol* 1334b8–10): “We need to have been brought up in noble habits if we are to be competent students of what is noble and just, and of political questions generally” (*NE* 1095b4–6). Since regimes should not discount the importance of habit, they should not discount the importance of leaving laws unchanged.

As to Brunschwig’s claim that Aristotle does not put forth a doctrine of natural law, it is misleading to conclude that he therefore believes that all law is variable. Aristotle indeed teaches that justice resides in concrete decisions rather than in general rules. Yet, as Leo Strauss points out, “one can hardly deny that in all concrete decisions general principles are implied and presupposed.”¹⁵ Aristotle implies that universally valid principles exist when he states that “all is changeable; but still there is such a thing as what is natural and what is not” and observes that “nature” intimates what is “best” (*NE* 1134b29–30, 1135a5). This is not to deny that circumstances may justify suspending these principles but to underscore that political decisions should ensue only from an earnest attempt to uphold them—a difference between Aristotle’s and Machiavelli’s views. In short, the requirements of natural law do not vary, the requirements of justice do.

Aristotle suggests that earlier “discoveries . . . taught by need”

¹⁴ “Du mouvement et de l’immobilité de la loi,” 520, 530–35, quotation from 540.

¹⁵ *Natural Right and History* (Chicago: University of Chicago Press, 1953), 159; see also 160–62.

(*Pol* 1329b27–28) intimate the principles of natural right. It has been discovered that all political orders need the following: sustenance, arts, arms, funds, religion, and deliberation (*Pol* 1328b5–16, 1322b29–37). Our ancestors have also discovered that a political order may fulfill these needs by establishing the several kinds of law discussed in the rest of this chapter.

SOFT LAWS: MARITAL, HEALTH, AND POPULATION LAWS

Because as long as human beings are able to, they will supply themselves with food and tools, legislators should aim to bring about a healthy populace; they should in effect superintend the bodies of citizens (*Pol* 1334b25–26). This can be done by way of marital, health, and population laws.

Marital Laws

Marital laws should be conducive to the procreation of healthy offspring and to the health of the couple (*Pol* 1334b32–1335a35, b29–37). If men marry around the age of thirty-seven and women around the age of eighteen, then their bodies are in their primes, their sexual desires are mutual, and their reproductive years coincide.¹⁶ Further, they and their children are more likely to be healthy, since very young mothers often have difficult births, resulting even in their deaths; young men impede their own growth by having intercourse; and very young or old parents tend to give birth to physically and mentally defective children.¹⁷ Finally, par-

¹⁶ Although eighteen may seem by late twentieth-century norms too young an age for a woman to marry, Aristotle is in fact arguing against early marriage for women. In Athens at his time it was customary for women to marry around the age of fourteen, the age at which they became legally possessed of their property. He apparently prefers the Spartan custom, according to which women marry a few years later; see W. K. Lacey, *The Family in Classical Greece* (Ithaca: Cornell University Press, 1968), 162.

¹⁷ In the case of children of aged fathers, Aristotle may mean that they are not only physically weak but also subject to emotion (*Politics*, vol. 3, ed. Newman, 476, note on 1335b29).

ents should be sufficiently older than their offspring to benefit them and win their respect but young enough to benefit from their children's assistance in old age.

Laws should not, however, require men and women to marry at certain ages. In fact, couples should "study what is said by doctors and experts in natural [science] in relation to procreation" (*Pol* 1335a39–40); men and women themselves should make an informed judgment as to when to marry and have children. One might infer from Aristotle's discussion that laws should at most make it advantageous for couples to marry at certain ages. Such laws might include a dowry law or a law imposing a fine on all single males over fifty (a modern equivalent being a higher tax rate for single persons).

Marital laws should also encourage monogamy by discouraging adultery (*Pol* 1335b38–1336a2). Adulterers, men as well as women, should be punished if their actions interfere with the conceiving and raising of children. Apparently, punishment should be no more severe than revocation of political privileges, such as eligibility for public office; in any case, the stigmatization should be appropriate to the offense.

Legislators should only loosely legislate or legislate around marital relations, presumably because they are private. To make judgments in such matters for individuals would discourage them from their spousal and parental responsibilities and deprive them of opportunities to use their own judgment, such opportunities being necessary to the cultivation of judgment.

Health Laws

Laws should also encourage fitness through moderate exercise. Moderation is important not only presumably because over- and underexertion impair health but especially because the condition of the body affects one's character or soul and one's ability to pursue liberal activities (*Pol* 1334b25–28). If one is routinized by and sleepy from a schedule of rigorous exercise, like an athlete, then one cannot learn or enjoy liberal pastimes (*Pol* 1335b5–11, 1339a7–10). And if men train all the time, like the Spartans, they are apt to want to prevail over others, a desire that serves war but not the rest of life. Physical prowess and the courageous disposition it engenders are not ignoble, but their nobility derives from their capacity to

serve and protect the higher moral and the intellectual virtues.¹⁸ The end of war is peace, and the end of peace, leisure (*scholē*), for which is needed moderation, justice, and the virtues of the mind. Men need moderation and justice especially during peacetime, for good fortune tends to make them arrogant (*Pol* 1333a30–b16, 29–31, 1334a11–b4). Contrary to Arendt's interpretation, Aristotle thus gives no indication that ordinary political life requires citizens to have "a fiercely agonal spirit," that "the virtue of courage is one of the most elemental political attitudes."¹⁹ When legislating health and other laws, legislators should regard temperance as more of an aim than courage, not least because it is required to live privately as well as to live well in public.

Like marital laws, health laws should only encourage rather than mandate certain conduct. Fines should apparently be the severest penalty for noncompliance (equivalent policies exist today, such as higher insurance premiums for smokers). Moreover, positive as well as negative incentives should be used to encourage compliance. The receipt of a blessing, for example, might be made contingent on walking a mile to a temple. Furthermore, it may be appropriate for laws to encourage only select groups to exercise. Oligarchies might fine the wealthy but not the poor for not exercising, for example, since the poor get enough exercise by laboring (*Pol* 1297a32–34); or legislators might deem it appropriate to situate only the goddess of childbirth a mile from the city, thus encouraging only pregnant women to walk the distance every day (*Pol* 1335b14–16).

Legislators should use such devices to bring about not only a healthy populace but the sort of political participation that secures polity or aristocracy (*Pol* 1297a38–b1).²⁰ An oligarchy should not penalize the free poor for not exercising and should encourage the rich to exercise, for example, in order to give the poor more time to serve on juries or attend political assemblies. Likewise, a democracy should distract the free poor from political participation through similar measures.

¹⁸ Plato's Athenian Stranger advises legislators to rank the virtues in the following order: the intellectual virtues, moderation, justice, and courage (the divine goods), and then health, beauty, strength, and wealth (the human goods) (*Laws*, 631c–d).

¹⁹ *Human Condition*, 35, 41.

²⁰ See also *Politics*, trans. Lord, 258 n. 44.

Population Laws

If marital and health laws succeed, the population increases. Aristotle therefore spends an entire chapter advising legislators to restrict the number of citizens (*Pol* VII.4). He agrees with the common view that a city must be great if it is to be happy,²¹ but he believes that the greatness of a city, like that of any other animate or inanimate thing, lies not in its magnitude but in its capacity to perform its function. A huge ship is not great if it cannot sail. The function of any city is to achieve self-sufficiency and order. If it has too few members, it cannot achieve self-sufficiency; if it has too many, it cannot achieve order. Order requires that the rulers fulfill their function, which is to enforce the laws and to make just decisions, and that the ruled fulfill theirs, which is to obey the laws and to elect rulers on the basis of merit. Experience shows, Aristotle says, that overpopulated cities have difficulty securing obedience to the laws. But the point can also be established theoretically: law is a system of order, and orderliness, which is a part of beauty, presupposes limits.²² Further, rulers cannot rule justly and citizens vote justly unless they are familiar with each other's characters, an unlikely state of affairs in a populous city.²³ Aristotle also theoretically grounds the connection between ruling and population size: ruling and legislating are arts, and like other arts they require suitable materials. A carpenter cannot build a house with three planks, a painter cannot paint a portrait on the side of a barn. He has already made this point with respect to household management: "There is a limit with respect to what exists for the sake of the end" (*Pol* 1257b27–28, 30–31). A last point on behalf of a moderate sized population, very directly connected to a city's preservation, is that it makes it easier to marshal and command forces for war. Many bodies are not sufficient for war; they must be able to be directed.

²¹ See also Plato, *Laws*, 742d.

²² On the connection between beauty, order, and limits, see also *Met* 1078a36 [and b1] and Plato, *Philebus*, 64e, as suggested in *Politics*, vol. 3, ed. Newman, 344–45.

²³ As the Athenian Stranger observes, "there is no greater good for a city than that its inhabitants be well known to one another; for where men's characters are obscured from one another by the dark instead of being visible in the light, no one ever obtains in a correct way the honor he deserves, either in terms of office or justice" (Plato, *Laws*, 738e).

Aristotle recommends two laws as means to limit population: one fixes the number of children allowed to each couple, and one prohibits the raising of deformed children (*Pol* 1335b19–26). If a couple conceives beyond the limit, then the embryo should be aborted (but before “perception and life arises”). If a deformed child is born, then it should be exposed. Aristotle realizes that not all parents would comply with such laws, but he does not say what the consequence for noncompliance should be.

One is thus reminded of his earlier recommendation that legislators leave the upholding of marital and health laws largely to the judgment, or one might say the conscience, of individuals. Good marital, health, and reproductive practices should be more a matter of custom or habit, not only because they are essential to the preservation of a city, but because their being matters for private judgment is essential to the city’s goodness.

LAWS TO PREVENT DOMESTIC CONFLICT: ECONOMIC AND PENAL

In addition to a healthy populace, all cities need arms, both to keep domestic peace and to ward off external aggression (*Pol* 1328b7–10). Aristotle indicates his belief that internal discord, in the form of either faction or crime, threatens the existence of a regime more than war does by his greater attention to the causes and prevention of the former. He may have been persuaded of the destructiveness of domestic conflict by Plato, whose Socrates observes that “the name faction is applied to the hatred of one’s own, war to the hatred of the alien.”²⁴ In any case, legislators should make sure to establish a police or guard as well as a military.

Causes and Signs of Faction and Crime

If legislators are to institute further measures to preclude civic conflict, then they should recognize its signs, causes, and facilitating circumstances (*Pol* 1302a18–22). The chief cause of conflict is the desire for money and recognition. Men fight with one another even to the point of demanding constitutional change in order to gain or avoid losing either (1302a31–34). Legislators should realize,

²⁴ *Republic*, 470b.

at the same time, that most people probably do not seek both profit and honor, since most tend to prefer one thing above all else, believing that it will bring happiness (*NE* 1095a18–24). In fact, most people prefer money and what it can buy—namely, pleasure—to recognition and what it can bring—namely, power. Consequently, they would usually rather attend to their private business than hold public office (*Pol* 1308b34–37). Appreciating that people prefer to participate in public life to different extents, rather than assuming that everyone wants to, is important to preserving a regime. A practical arrangement would assign offices only to those desiring recognition or power, or, in other words, would accommodate a range of desires for privacy.

In regimes not so arranged, civic conflict is more likely to occur. The chief sign of such trouble, to which legislators should be alert, is the widespread perception of inequality—either when many perceive an inequality of condition, believing themselves to have less wealth or fewer prerogatives than those they consider their equals, or when they perceive an inequality among persons, believing themselves to have the same or less wealth or power than those they consider inferior. Such groups may initiate conflict to gain their perceived due, equality or superiority (*Pol* 1301b26–27, 1302a24–31). The desire for justice does not, however, necessarily coincide with self-interest; men may clash with one another because they think *others* lack their due in wealth or prerogatives (1302a38–b2). Whether seeking justice for themselves or for others, they may be doing so unjustifiably, since their perceptions may be mistaken (*Pol* 1280a9–16, 1282b18–23, 1302a28–29, 40–b1). Most people are poor judges particularly of their own situations; they may not in fact merit what they desire. But they may be mistaken also about the situations of others, who may in fact merit the wealth and prerogatives they have. Aristotle thus implies that legislators should respond to the demands of citizens only if they coincide with those of justice, which is the common advantage (1282b16–18).

Legislators should also recognize the numerous circumstances that facilitate conflict or, one might say, that remind men of their relative material and political status. Rulers may be arrogant, for example, making the ruled want to overthrow them; or they may be fearful from having wronged the people, thus desiring to suppress them further; a person or persons either inside or outside the

government may seek preeminence with a view to establishing monarchy or dynasty. These and numerous other situations help give rise to faction (*Pol* 1302b2–5, V.3).²⁵

The predominant philosophical point to emerge from this discussion is the distinction between the sense of justice and the feeling of envy. On this point, Aristotle and a contemporary liberal philosopher, John Rawls, agree: they both argue that, though “the appeal to justice is often a mask for envy,” a genuine “sense of justice” is not, as Freud claims, “the outgrowth of envy and jealousy.”²⁶ Envy cannot be the basis for, or accompany, the sense of justice, because, like some other feelings such as spite, it does not have a mean; some sentiments, not their excesses or deficiencies, are themselves base (*NE* 1107a9–14). In contrast to Rawls, however, Aristotle does not think that politics should proceed from the assumption of universal rationality.²⁷ Regimes should educate individuals to recognize that equality of distribution is not the same as justice. Legislators should also realize that education will not eradicate envy and should thus use other means to mitigate it.

The Middle Class

One measure Aristotle recommends to preclude conflict is increasing the middle class (*Pol* 1296a7–9). When the middle class predominates, people perceive existing inequalities to be less great (*Pol* 1295b29–33, 1308b30–31). The poor do not feel as poor because they see that the middle class also has less than the rich, and the rich are less fearful of the poor because they see that the middle class also has property interests. Moreover, those of middling means do not envy the rich because they are not in want and do not perceive themselves as greatly unequal to them. In short, the middle class neither is plotted against nor plots against others. This

²⁵ See also *Politics*, vol. 4, ed. Newman, 296, note on 1302a34.

²⁶ *A Theory of Justice* (Cambridge: Belknap, 1971), 539, 540. Rawls summarizes Freud: “As some members of the social group jealously strive to protect their advantages, the less favored are moved by envy to take them away. Eventually everyone recognizes that they cannot maintain their hostile attitudes toward one another without injury to themselves. Thus as a compromise they settle upon the demand of equal treatment. The sense of justice is a reaction-formation: what was originally jealousy and envy is transformed into a social feeling, the sense of justice that insists upon equality for all” (*ibid.*, 539); Rawls cites Freud’s *Group Psychology and the Analysis of the Ego*, rev. ed., trans. James Strachey (London: Hogarth, 1959), 51ff.

²⁷ *Theory of Justice*, 530.

makes those of middling means trustworthy, puts them in a position to judge well, and thus makes them worthy of ruling according to both rich and poor (*Pol* 1297a5–6, *DA* 424a6). Both rich and poor also welcome the rule of the middle class because their alternative, to join forces against it, is not in their interest; depending on which is in the minority, their collaboration would eventuate in the submission of one class to the other—the rich would enslave the poor or the poor would reduce the rich to their level by distributing their property (*Pol* 1296a1–3, b40–1297a5). Furthermore, there is no guarantee that this new aggregate could predominate over the middle class.

But how can a regime increase its middle class? We know from Aristotle's critique of Phaleas's proposal that legislating property redistribution is not a solution. Aristotle proposes a few ways laws could help to achieve parity of income (*Pol* 1309a14–25). Although they should not redistribute the income of the wealthy, for example, they might restrict inheritances to family and allow only one inheritance per individual. In addition, a regime might allot the better-paid public offices to the poor. Such laws are desirable in that they do not alter the fundamental nature of the regime (*Pol* 1296b34–38). But it is doubtful that they alone can effect much of a redistribution. By raising this doubt, Aristotle reminds us of his recommendation that all regimes accommodate a market economy. He helps confirm that he believes the market should effect redistribution when he includes "an abundance of money" on his list of things a city cannot exist without (*Pol* 1328b10, 1322b32–33). The constitutional laws of a regime should provide for a market just as they should provide for a military or any other political necessity. Maintaining a market is a way of increasing the middle class without weakening the authority of the laws by continually changing them. Citizens are not likely to resist incremental redistribution which they largely control and which does not alter the fundamental nature or constitution of the regime.

Aristotle makes clear, then, that the aim of increasing the middle class is not homogeneity or even increased political participation but avoidance of civil disobedience and thus preservation of the regime. Increasing the middle class is a means, not an end; if measures taken to favor the middle class (such as inheritance and tax laws) create conflict, then they should not be maintained. The regime's stability is paramount, and the sign of stability is prevail-

ing support of the regime by its citizens (*Pol* 1309b14–18, 1294b36–40, 1296b14–16).

Criminal Punishment

Another way regimes should safeguard themselves against civil disobedience and other criminal activity is by instituting a penal system. Its presence should deter some of the criminally inclined and its punishments may discourage recidivism.

Aristotle does not seem to recommend severe punishments for crimes, mentioning in the *Politics* primarily fines, exile, and “dishonor” (probably, public stigmatization by revocation of political privileges) as penalties for breaking laws. He does discuss the matter of guarding prisoners but does not give examples of offenses warranting incarceration (perhaps, then, they are few) (*Pol* 1321b40–1322a29, b35). Nor does he mention capital punishment. He apparently thinks that physical punishment other than incarceration is appropriate only for the very young (*Pol* 1336b7–11).

But other arguments compete against these. First, that the many are usually poor (*Pol* 1279b37–38) suggests that fines are a futile way to punish them. Second, the suggestion that beating is appropriate for punishing only the very young occurs in the context of a discussion of the best regime, in which all older persons are virtuous. Third, Aristotle describes “the many” in much the same way that Hobbes describes all human beings—as seekers of pleasure and avoiders of pain. By nature, fear of pain, not shame, motivates them to reasonable conduct. Indeed, in the *Nicomachean Ethics* Aristotle says that “the many” yield (at least initially) not to argument but to force (*bia*) or the threat of force, compulsion (*anagkē*) (1179b11, 28–29, 1180a4–5). Finally, he claims, also in the *Nicomachean Ethics*, that retributive justice entails returning “evil for evil” (1132b34–1133a1), except in the case where one party is an official (1132b28–30), and apparently endorses a proposal put forth by Plato that the pains (*tas lupas*) inflicted to punish a transgressor of the law should be those “that are most opposed to the pleasures he desires” (1180a12–14). Although this implies fines rather than incarceration or other physical punishment for tax evaders, embezzlers, and other ‘white-collar’ criminals (and presumably an amount proportional to the amount stolen—that is, to the amount of pleasure sought), it implies equally that murder should beget

execution, and in the way the murder was carried out,²⁸ and that the punishment for rape should be castration or some such debilitating measure (today, perhaps pharmaceutical). One is reminded of the injunction in Exodus 21:23–25. But Aristotle advances ‘an eye for an eye’ not only on behalf of (divine) justice but with a view to deterrence (*Pol* 1332a11–14). He does not present the above extrapolations perhaps because he realizes that a discussion of physical punishments would be unseemly.

In sum, Aristotle’s recommendations for preempting domestic conflict—maintaining a police force, increasing the middle class, and instituting a penal system—are designed to maintain obedience to the laws and not otherwise to make better men. One can observe, however, that civil obedience is at least a precondition of virtue, order at least a precondition of justice.²⁹

LAWS CONCERNING WAR

A city needs not only to suppress internal conflict but to defend itself against attack from outside (*Pol* 1328b7–10, 1333b40–41). Given that the ability to ward off aggression is basic to the survival of anything, Aristotle’s recommendation that a regime institute a standing militia is not surprising. This preservative precaution hardly needs to be pointed out to legislators. What legislators might be less certain about is whether offensive wars are necessary to the survival of a regime. This they must know in order to allocate adequate resources to the military and to have a sense of the extent to which they should prepare a regime for war.

On the one hand, Aristotle denounces the laws of Sparta and Crete for their pronounced concern with domination; they make

²⁸ The reasoning being that the cessation of the murderer’s life by the same means inflicts the amount and kind of pain most opposed to the amount and kind of pleasure the murderer apparently took in the act.

²⁹ As J. L. Stocks observes about Books IV–VI of the *Politics*, “we are here almost, but never quite, surrendered to that ‘cogent expediency’ on which in Edmund Burke’s view all just government depends.” To the extent that Aristotle surrenders in these books to realism and empiricism, Aristotle argues, as Stocks also points out, on behalf “of the relativity of political truth, of the necessity of concessions to democracy, of political institutions as the expression of social and economic fact, the adoption of stability and contentment instead of virtue as the test of success”; “Scholè,” *Classical Quarterly* 30 (1936), 186–87.

war a way of life and victory the aim of the regimes. He also gives the impression of disapproving of the Scythians, the Persians, the Thracians, the Celts, and others for admiring and honoring the power to dominate. In the same tone, he reports laws and customs that reward men for killing enemies (*Pol* 1324b5–21). In addition, he points out that it is not lawful to conquer and rule neighboring regimes without regard to their wishes, for it disregards their free status, their ability to rule themselves. It is indeed noble to rule over free persons, but such rule cannot be achieved by sheer might. In sum, a regime preoccupied with war harms both itself and others (*Pol* 1324b22–34, 1333b26–36).

On the other hand, Aristotle says that an offensive war is justified in two cases: when a free people is in need of outside leadership, and when a people has no potential to rule itself (*Pol* 1333b41–1334a2). Assuming the leadership of these peoples is justified because it benefits them. In the first case, Aristotle does not say that the people's consent is required to justify hegemony over them. One might infer, however, that he is suggesting that, once outside leadership has ordered the regime, the people would be grateful to it; that is, their consent would follow rather than precede the intervention. Moreover, by calling such people free, Aristotle implies that such hegemony should be temporary, removed once their ability to rule themselves has been restored. In the second case, since the naturally slavish cannot reason on their own, consent *per se* cannot be forthcoming. But Aristotle has already made clear that natural slaves do not object to proper mastery. The summary point, however ironic, is that aggression over neighboring peoples is justified only if accompanied, or at least followed, by prudence and moderation. One might observe, however, that although it would be noble for a regime to wage offensive wars in these two instances, it is not clear that it need do so to survive. Nonetheless, one can see that peoples who are not ruling themselves pose at least a threat to a neighboring regime. One can further infer that, if the instability of a neighboring people is great enough, or persists long enough, intervention is not only noble but necessary. In any case, although a regime may or may not be justified in using force against such people for the sake of its own self-preservation, the unpredictability of such people justifies a regime's being *prepared* for an offensive war. Aristotle does not,

then, justify so much offensive war as military preparedness for offensive war, as a means to survival.

His teaching to legislators about war might be put as follows. Next to a virtuous populace, the noblest end a regime can achieve is peace. Peace is noble because it facilitates virtue, but it is also necessary for the preservation of a regime. To achieve peace, a regime must be prepared to wage both defensive and offensive wars. But the nature and extent of military preparedness must be compatible with peace and civilian, liberal pursuits. And the nature and extent of any aggression must be such as to allow civilians to continue or at least to return to living in a liberal way. War must always serve peace, and peace, virtue (*Pol* 1325a5–7, 1333a30–b3, 14–16, 29–31, 38–1334a10).³⁰

RELIGIOUS LAWS

As noted earlier in the chapter, religion is fifth on Aristotle's list of things that must be present for a city to exist (*Pol* 1328b11–12). Religion should be part of a city, but it should not be part of government (*Pol* 1299a17–19, 1322b18–19). Aristotle is thus among the first political philosophers to advise the separation of church and state. Yet it becomes clear that he does not uphold a strict or modern version of that doctrine. Even his list of a city's indispensable items suggests that religion should be as separate from government as are the military and the economy; laws should establish nonpolitical offices to maintain it.³¹ Priests, like generals and market managers, should be accessible and responsive to government

³⁰ Aristotle follows Plato in denying that war is the proper end and most serious business of the polis. See, for example, Plato, *Laws*, 631b and *Republic*, 521a, as recommended by Newman, *Politics*, vol. 3, 332, note on 1325a7; see also 443, note on 1333a35, and Friedrich Solmsen, "Leisure and Play in Aristotle's Ideal State," *Rheinisches Museum für Philologie* 107 (1964), 209.

³¹ This is not to say that those holding political office cannot be religious or make the appearance of their being so serve their political objectives. Aristotle indicates that appearing religious can be politically effective when he advises the tyrant: "He must always show himself to be seriously attentive to the things pertaining to the gods. For [men] are less afraid of being treated in some respect contrary to the law . . . if they consider the ruler a god-fearing sort who takes thought for the gods, and they are less ready to conspire against him thinking that he has even the gods as allies" (*Pol* 1314b38–1315a3).

but should function independently. Just as government should be able to command the military to go to battle and to impose higher sales taxes, so it should be able to instruct the religious establishment to induce people to pay revenues, to exercise (*Pol* 1330a8–9, 1335b14–16), or perhaps to have more or fewer children. Such inducements are necessary in ordinary cities because, to recall, most human beings tend to be recalcitrant to reason.³² The presence of “the gods,” or the promulgation of myths that explain their presence, can be as effective in eliciting subscription to the laws as the presence of a police force and a penal system.

But religion is superior to the threat of force (and perhaps therefore listed by Aristotle after arms, second only to political offices) in that it does not seek to suppress passions but to provide a means by which they can be expressed without endangering the regime. Religion can fuse *pathos* and *ethos* without (unlike rhetoric) the use of *logos*. It can therefore move people to comply with the laws without requiring them to follow arguments.

Religion can also render citizens not only obedient to the laws but respectful of authority in general and fearful of shame, attributes belonging to “free persons” (*Pol* 1331a40–b1). It therefore belongs even in the best regime. Since the proximity and counsel of priests tends to edify citizens, Aristotle recommends that most places for worship be conspicuous and near the citizens’ recreational area (excepting those places required by religious law to be removed from the city) (1331a24–35). In general, at any rate, legislators should remember that laws should remind citizens of the gods.³³

In either case, whether serving mere obedience or virtue, preservation or a higher justice, religion should serve the regime, not vice versa; for once religious aims displace political ones, privacy is endangered. Religion that does not recognize the sanctity of the human realm aspires to obliterate the distinction between public

³² See also Leo Strauss, *The City and Man* (Chicago: University of Chicago Press, 1964), 22.

³³ Jean-Pierre Vernant explains that the emergence of the polis in ancient Greece brought about the publicization of religion. Religion was no longer secret wisdom known by priests of a *genē*, but a body of public truths promulgated by official city cults. Temples were open, public, and visibly situated; they and their sacred holdings were to be seen—to be a spectacle providing “a lesson on the gods”; see *The Origins of Greek Thought* (Ithaca: Cornell University Press, 1982), 54–55.

and private. Thus the fundamental laws of a regime should ensure that religion remains civil.³⁴

POLITICAL LAWS: OFFICES AND ENTITLEMENT

The last and most important item on Aristotle's list of things a city cannot exist without, "the most necessary thing of all," is a public system of judgment or "offices" (*Pol* 1328b13–14, 1291a22–24, 34–36). The discussion suggests that they are the most important constitutional provision because they compensate for law's inadequacy to judge particulars; the rule of law is perfect or complete (only) in the sense that it provides for its own deficiency (1292a32–34).

Government needs many offices, but only two general sorts—deliberative and judicial. By judicial offices Aristotle means civil and criminal court posts, including juries. By deliberative offices he means the political offices. The deliberative element should have authority over foreign policy (matters of war and peace and alliances), over the laws, over (judicial) cases calling for severe punishment (the death penalty, exile, or confiscation), and over the appointment and auditing of officials (within government as well as appointments to military, religious, bureaucratic, and other such posts) (*Pol* 1298a3–6). Thus, the deliberative offices have legislative and higher judicial functions. What is more, not only "deliberation and judgment concerning certain matters" but "particularly command" characterize political offices (1299a25–28). Aristotle not only assigns an executive function to what he calls the deliberative element but seemingly paradoxically says that its main function is to execute.³⁵ This makes sense, however, given his teaching that regimes should arise out of those that exist. The fundamental laws of a regime are given to men (in *patrioi nomoi*) to be executed, but their perpetuation and preservative function depend on their being ad-

³⁴ Aristotle's contemporaries also regarded civil authority as more authoritative than religious authority. Civil courts judged violations of religious law, and the religious authorities (for example, the *Eumolpidai* or the *exēgētai*) had no standing in court; the presiding magistrates and juries were secular; see MacDowell, *Law in Classical Athens*, 193; Michael Gagarin, *Early Greek Law* (Berkeley: University of California Press, 1986), 14, 70; Ostwald, "Was There a Concept *agraphos nomos*?" 90, and *From Popular Sovereignty*, 165–71.

³⁵ See also *Politics*, trans. Barker, 193 n. NN.

justed to circumstances and thus on human discretion. It seems then that nature sanctions the sovereignty of deliberation for the sake of itself—for the sake of perpetuating the actualization of natural law and perpetuating human nature. To perpetuate the actualization of its universals, it is not enough for nature to make them felt or to impose them on human beings; it must give the agents of their actualization some authority over them (*NE* 1134b18–1135a5). Ironically, then, the rule of *patrioi nomoi* is superior to the rule of men in that it accommodates and invites their rule as a means to perpetuate itself; the rule of men is not inimical to but in fact the catalyst of the rule of law. In sum, Aristotle wants to demonstrate that there cannot be purely executive, legislative, and judicial functions. Executors must judge, and legislators and judges must execute.³⁶

The Preservative Tasks of Rulers

Aristotle's references to both "legislators" and "political rulers" (or "experts in politics") in his political works proposes a division of labor within the deliberative offices, evidently between those who have authority over the laws—the preservative laws—and those who rule otherwise. Like legislators, other rulers should seek to preserve the regime.³⁷ In chapter 8 of Book V of the *Politics*, Aristotle discusses the preservative tasks of rulers.

First of all, for a regime to exist, its inhabitants must perform specific actions necessary to the regime's functioning. The objective of political rule, which issues commands, is to ensure the

³⁶ For related and similar points, see Harvey C. Mansfield, Jr., *Taming the Prince: The Ambivalence of Modern Executive Power* (New York: Free Press, 1989), 46–71; 53–65 is an in-depth analysis of deliberating and judging as presented in Book IV of Aristotle's *Politics*; for a longer version, see Mansfield's "The Absent Executive in Aristotle's *Politics*," in *Natural Right and Political Right*, ed. T. B. Silver and P. W. Schramm (Durham: Carolina Academic Press, 1984), 169–96. Mansfield points out that the need for the sovereignty of deliberation is why the deliberative offices must be plural (*Taming the Prince*, 58, 71). Mansfield explains reason's sovereignty as follows: "Deliberation in [Aristotle's] account, unlike modern scientific reason, does not make its way solely on the basis of its own premises to create its own sovereignty. For Aristotle, deliberation must deal with things beyond human power and somehow bring them within human power. While facing the difficult, perhaps indeterminate, question of what is beyond and within human power, Aristotle does at least avoid the necessity embraced by the modern schema of claiming that we are sovereign even when we give no thought to the matter at hand" (*ibid.*, 54).

³⁷ Not even political activity is wholly divorced from necessity; political rule, like mastery, cannot then be the noblest of activities (*Pol* 1325a26–27).

performance of such substantive actions. But it can achieve this only if rulers and subjects recognize the authority of the laws by subscribing to them. In that the activity of ruling postulates association in terms of laws (*Pol* 1270b29–31), it must seek to preserve them. The commands of rulers should not transgress the laws even in a minor way, for minor transgressions eventually transform the regime (*Pol* 1289a19–20, 1307a40–b6, 30–34).³⁸ It should be observed that rulers are thus responsible for seeing that the activities law mandates as private remain private.

That ruling presupposes law indicates that the validity or authenticity of commands derives from law. An authentic command reflects the spirit of the laws; oligarchies issue oligarchic commands, democracies democratic ones, and so forth.³⁹ Simply, an authoritative, or just, command respects or expresses law (*Pol* 1289a18–19).⁴⁰ As Aristotle explains, there are two sorts of good political order or, literally, good rule according to law (*eunomia*): when the laws of a regime are obeyed, and when they are both obeyed and the best (*Pol* 1294a4–6).

The next most important preservative task of rulers is to maintain good relations with one another and with the ruled. The first they may achieve by treating one another “in a democratic spirit of equality.” As Aristotle says throughout his political works, democratic principles should obtain among the equally capable; the best place for democracy is *within* government or the governing class. Office holders might restrict their tenure, for example, to give their peers turn in office or a particular office. (This tenure should, however, be the longest possible to take advantage of experience; *Pol* 1261a38–39.) In aristocracies and oligarchies, such a rotational policy prevents the concentration of power in a particular family; in democracies, it prevents the rise of demagogues (*Pol* 1308a3–7, 10–24).

In Book IV of the *Politics*, Aristotle hints that the best way for rulers to maintain good relations with the ruled is to maintain the latter’s privacy. He explains that proper political rule should direct all or a part of the citizenry only in certain matters, such as war or

³⁸ In this sense, political rule differs from household rule, which is not confined to interpreting rules but carries the prerogative of making and changing them.

³⁹ Or, as Oakeshott explains, “competence to command belongs to an office, a *persona* identified in terms of rules” (“The Rule of Law,” 130).

⁴⁰ See also *Politics*, trans. Lord, 256 n. 3.

the supervision of children (1299a20–22). But in chapter 8 of Book V, he explains more ways rulers should keep the ruled content. They should appoint to political posts those among the ruled who demonstrate leadership ability or ambition (1308a7–9), for example. Such appointees as well as those already in government should, however, be advanced by degrees, not only to test their ability to uphold certain responsibilities but to prevent old boy networks, nepotism, and the like (1308b10–18). In addition, rulers may assign the least authoritative, nonpolitical offices to the ruled. The well-off in a democracy and the poor in an oligarchy could, for example, be assigned to religious, military, bureaucratic, judicial,⁴¹ and penal posts (1322b31–36). Nonetheless, these posts differ with respect to the amount of “experience and trust” they require and should be distributed accordingly. Aristotle implies that a regime may safeguard itself against civil disobedience not only by instituting a police, a penal system, and a free market economy but also by distributing civil service appointments or pseudo-political power among the ruled. This should satisfy desires among them for recognition. It should be noticed, however, that rulers, not laws, should distribute authority to the ruled (on an ad hoc basis); such distribution should not be a constitutional provision or, as we would say, a right. At any rate, Aristotle advises rulers not to appease the ruled generally by granting them political power (1309a31–32, 1321a31–32), for this would not preserve the regime. Finally, rulers should also (indirectly) treat the ruled fairly by keeping their own salaries moderate (1308b31–33).

In the remainder of the chapter, Aristotle lists other general preservative measures. Rulers should keep alive or not try to dispel fears about the security of the regime that grip a populace, for such fears make the latter more protective of and willing to defend the regime. Rulers should intervene in disputes among the distinguished members of a regime, for these can escalate into faction.⁴² Rulers should adjust property qualifications for office to take into account fluctuations in the value of currency.⁴³ And they

⁴¹ The Athenians selected juries by lot from a permanent group of six thousand volunteers; see M. I. Finley, *Democracy Ancient and Modern*, rev. ed. (New Brunswick: Rutgers University Press, 1985), 117.

⁴² For instances of such disputes and possible modes of intervention, see *Politics*, vol. 4, ed. Newman, 388, note on 1308a31.

⁴³ See *Politics*, trans. Lord, 262 n. 75.

should rely less on devices than on the laws to control who participates in the regime. This apparently miscellaneous list of tasks might be condensed into the general maxim that rulers should err on the side of caution, or always rule conservatively.

The Expert in Politics

Rulers can best achieve their conservative objectives if they employ a conservative mode of discourse. By employing this mode, which is rhetoric properly understood, they will persuade the ruled to obey their commands or policies. Since proper rhetoric combines *logos* with *ethos* and *pathos*, a rhetorician not only demonstrates his point logically but reveals his character and appeals to the characters and emotional state of his audience (*Rh* I.2.3). An effective appeal requires accepting uncritically, not examining in Socratic fashion, the common opinions of an audience or the public morality.⁴⁴ A ruler who refuses to accept this morality but proceeds to try to persuade is a mere sophist or dogmatist. One who insists on examining prevailing beliefs is not an expert in politics but a philosopher or skeptic.

Rhetoric, then, depends on the character of a populace, which in turn depends on the nature of the laws.⁴⁵ In contrast to the Sophists, Aristotle implies that law must regulate the arts because the reason inherent in law, unlike the reason inherent in the arts, is of the highest sort.⁴⁶ For the art of ruling to subordinate itself to the rule of law, it must—like the other arts—recognize its limits (*Pol* 1257b25–28). Experts in politics should not try to remake the world with causes or ideologies. Their virtue and justice relative to the regime and affection for it compel them to carry out the laws (*Pol* 1309a34–37, 1270b29–31), issuing commands only over particulars

⁴⁴ Larry Arnhart, *Aristotle on Political Reasoning: A Commentary on the "Rhetoric"* (DeKalb: Northern Illinois University Press, 1981), 38, 41, 153–54. Put technically, the rhetorician constructs a proof; however, although the body of this proof, the enthymeme, is like the logical syllogism employed in dialectic (*Rh* I.1.11), it incorporates *ethos* and *pathos* in order to create trust or belief (*pistis*) in the audience. The rational can embody the emotional without becoming irrational (*ibid.*, 21, 22, 34, 114–15). On Aristotle's claim that the rhetorician should employ *logos*, *pathos*, and *ethos* together, see also William M. A. Grimaldi, *Studies in the Philosophy of Aristotle's Rhetoric* (Weisbaden: Franz Steiner, 1972), especially 58; Mary P. Nichols, "Aristotle's Defense of Rhetoric," *Journal of Politics* 49, no. 3 (1987), 664–68.

⁴⁵ Arnhart, *Aristotle on Political Reasoning*, 24, 75.

⁴⁶ Strauss, *City and Man*, 23–24. Strauss cites *NE* 1094a27–b6, 1180a18–22; cf. 1134a34 with *Pol* 1287a28–30.

to achieve equity (*NE* 1137b27–32). In addition to love for the regime, love for their work—not an agonistic desire for power—motivates them (*Pol* 1309a35), though industry may look like the quest for power to others.⁴⁷

Aristotle's conception of political rule thus contrasts with the prevalent unreflective liberal view, derived primarily from Hobbes and Locke, according to which "power is the capacity . . . to subordinate the wills of others to one's own will" and is a "cause of antagonism in society." On this view, "the more one man's desire for power is satisfied, the more will his fellows' wish for it remain frustrated."⁴⁸ Aristotle instead teaches that rulers can in fact satisfy the ruled by exercising their power prudently, can even make them glad to be ruled and to be able to attend to their own affairs (*Pol* 1321a31–39, 1297b6–8, 1308b34–37).

Monarchy versus Aristocracy

If, as Aristotle seems to imply, only the prudent should be entitled to hold the political offices, then should not a human being whose prudence surpasses that of everyone else be entitled to hold all the offices—that is, to be king? Indeed, according to P. A. Vander Waerdt, Aristotle argues that if there exists a man so virtuous as to be able to govern alone, he should do so, for this would allow all citizens to devote themselves to the liberal arts.⁴⁹ It is indisputable that the rule of one supremely virtuous man appeals to Aristotle (*Pol* 1284b32–34) and likely that it appeals to him for the reason Vander Waerdt suggests, but Aristotle indicates several problems with such an arrangement, the main one being that, unlike a plurality of offices, a single office cannot be counted on to ensure the sovereignty of deliberation.

First, who should be king is not likely to be evident, for "it is not as easy to see the beauty of the soul as it is that of the body" (*Pol* 1254b39). Second, because of this difficulty, even good men may not agree on who is preeminent among them. Third, even if an outstanding man were detected and unanimously nominated to rule, he would be reluctant to claim the honor of ruling over all, preferring to give the honor to a friend (*NE* 1169a29–30). One

⁴⁷ For a similar point, see Mansfield, *Taming the Prince*, 49.

⁴⁸ As this view is explained by Roberto Mangabeira Unger, *Knowledge and Politics* (New York: Free Press, 1984), 64–65.

⁴⁹ "Kingship and Philosophy in Aristotle's Best Regime," *Phronesis* 30, no. 3 (1985), 249–73.

might point out that, just prior to explaining this man's willingness to give up riches, honors, and offices to friends, Aristotle says that he "would choose . . . to live nobly for a year, rather than for many years in a chancy way" (*NE* 1169a23–24). Thus, Aristotle does not logically (or psychologically) exclude the possibility of a sequence of short-term monarchs. Men might also agree more readily to be ruled by one man for just a year. On the other hand, the rule of even the best man might improve over time (*Pol* 1261a38–39). And the assumption of the existence of several exceptional men is suspicious since, according to Aristotle, it is not evident that we should assume the possibility of the existence of even one who is "like a god among human beings" (*Pol* 1284a11, b30–31). Even if we suppose with Vander Waerdt, as it seems we should, that Aristotle is recommending for king one whose virtue is heroic rather than philosophical,⁵⁰ such virtue seems to be unattainable by Aristotle's own account. Vander Waerdt seems to argue that, although "heroic virtue . . . transforms men into gods and places them beyond the sphere of human virtue and vice," such virtue is nonetheless humanly possible because it "is an excess of [human] virtue (*aretēs hyperbolē*)."⁵¹ But Aristotle indicates that this superhuman virtue must remain an aspiration, for every human soul necessarily has the passionate element (*Pol* 1286a18–20), which is able to pervert or twist even the best men (*aristous andras*) (1287a28–32); not even their passions always accord with virtue.

Aristotle therefore favors aristocracy over monarchy: "The judgment of a single person is necessarily corrupted when he is dominated by anger or some other passion of this sort, whereas it is hard for all to become angry and err at the same time" (*Pol* 1286a33–35). If, then, there are several persons who are "excellent in soul, just like the single person," they should rule, since they would be "more incorruptible" than the individual (1286b2–3, 1286a31–33); in other words, "if it is just for the excellent man to rule because he is better, two good persons are better than one" (1287b12–13).⁵² Accordingly, Aristotle describes the regime in

⁵⁰ *Ibid.*, 266–68. Aristotle cannot mean to propose that the philosophically virtuous person rule, because philosophy and politics are two different ways of life (*Pol* 1324a25–32).

⁵¹ "Kingship and Philosophy," 267.

⁵² Thus it is not the case that Aristotle thinks the outstanding man should rule "regardless of the natural character or excellence of his subjects" (*ibid.*, 249).

which virtue is honored above all as an aristocracy, not a monarchy (1273a41–b1, 1278a18–20), and states: “If, then, the rule of a number of persons who are all good men is to be regarded as aristocracy, and the rule of a single person as kingship, aristocracy would be more choiceworthy for cities than kingship . . . provided it is possible to find a number of persons who are similar” (1286b3–7).⁵³

The Status of Democracy

Legislators cannot assume that several persons equally preeminent in virtue exist in most regimes; it would be “a work of chance” if they existed in any regime (*Pol* 1332b16–23, 1331b21–22; *Rh* I.1.7). What qualification, then, should preservative laws establish for holding office? Only virtue legitimately entitles human beings to rule others, but a city needs wealth and manpower (*Pol* 1296b17–19); since virtue is scarce, regimes should allow also the wealthy and the people (those who are neither wealthy nor virtuous) to hold offices. It should be noticed, first, that this argument for allowing those who are less than virtuous authority does not appeal to justice or fairness (only persons who are similar deserve equal treatment; *Pol* 1332b27). Second, as I explain in the next section, Aristotle does not think that all those allowed authority should be allowed the same kind and amount of authority. Third, he cautions us not to confuse a system that grants all free persons entitlement to participate in the regime with democracy. Democracy does not, in theory or in practice, allow all to rule.⁵⁴

Aristotle arrives at the formal definition of democracy by reasoning (1) that democracy is the opposite of oligarchy, (2) that oligarchy is rule by the propertied, and therefore (3) that democracy is rule by those who lack a significant amount of property or are poor (*Pol* 1279b7–9, 17–19, 39–40). Even in actual democracies not everyone, but rather the majority, rules (*Pol* 1291b37–38, 1317b3–7). Moreover, the majority is—not by definition but by accident—

⁵³ Vander Waerdt cites this passage in support of his claim that both kingship and aristocracy are acceptable to Aristotle, and that their “relative rank . . . accordingly depends upon which of them is better suited to promote the way of life of the best regime” (*ibid.*, 255). It appears rather that their relative rank depends on whether one of them is unrealistic. For arguments that Aristotle does not intend his notion of supreme monarchy to be a practical proposal, see W. R. Newell, “Superlative Virtue: The Problem of Monarchy in Aristotle’s ‘Politics,’” *Western Political Quarterly* 40, no. 1 (1987), 159–78, especially 161, 170, 175; Mansfield, *Taming the Prince*, 23–45, 62, 70.

⁵⁴ See also Mansfield, *Taming the Prince*, 56.

poor (*Pol* 1280a3–4).⁵⁵ There is therefore confusion about what democracy is; it is rule by the poor, but since the poor are also many, it is thought to be rule by the many (*Pol* III.8). The many in particular reject the definition of democracy as rule by the poor, believing that number constitutes a just claim to rule. They maintain that whatever the majority resolves is just, since each of the citizens has a say. In their view, majority rule is a mark and defining principle of a free regime (*Pol* 1317b3–11, 1291b34–38).

In addition to empowering the poor majority, democracy in principle allows one to live as one wants. Like most human beings, democrats regard freedom as the greatest good. But they reason that, since not living as one wants is characteristic of a person who is enslaved, living as one wants is characteristic of a person who is free. Thus, they prize freedom of expression above all else—above wealth, family, and virtue. From their presuppositions that living freely is the greatest good and living as one wants is living freely, they claim the right to political freedom; that is, they claim that living freely requires freedom from any government interference and, failing that, the freedom to rule and be ruled in turn. They accept rotational rule because, in distributing authority to every citizen without regard to personal merit, it upholds the democratic notion of justice as equality (without regard to equality in what things) (*Pol* 1317a40–b4, 11–17; *NE* 1131a12–29).

Notable characteristics of democracy include “election to all offices from among all”; “having all offices chosen by lot, or those not requiring experience and skill”; “having offices not based on any property qualification, or based on the smallest possible”; “the same person not holding any office more than once, or doing so rarely”; “having all offices of short duration . . . where . . . possible”; and “having all or [persons selected] from all exercise judicial functions” over “the greatest and most authoritative matters” (*Pol* 1317b17–1318a3). Thus, many offices do not require any knowledge, experience, or wealth, and most offices, because of their short tenure, do not enable one to acquire any knowledge, experience, or wealth. In other words, in a democracy an ignorant, inexperienced, and poor majority rules.⁵⁶

Yet this characterization does not take into account Aristotle’s

⁵⁵ See also Strauss, *City and Man*, 36.

⁵⁶ Or, as Strauss reasons, “if democracy is rule of the poor, of those who lack leisure, it is the rule of the uneducated and therefore undesirable” (*City and Man*, 36).

discussion of the merits of collective judgment, which points out that, although the individuals constituting most multitudes lack virtue, they may by acting in concert surpass in virtue and thus judgment individuals superior in virtue (*Pol* 1281a42–b5). This cannot, however, be said about all multitudes, since some are beastly (1281b15–20). That a multitude only *might* have good judgment means that it is not safe to have it fill the highest offices, for it might commit injustices or simply make mistakes (1281b26–28).

In sum, it becomes clear that Aristotle indicts democracy, and even more particularly the democratic character: “Low birth, poverty, and vulgarity” characterize the many (*Pol* 1317b40–41).⁵⁷ Lacking self-restraint and prudence and insisting that living by no standard is the best standard, they live deviantly. Democracy is thus itself, in a word, a deviation (*Pol* 1279b4–6).

Polity

The form of regime second best to aristocracy is polity, in which the minority—the wealthy and the virtuous—as well as the majority are entitled to hold office. But Aristotle’s critique of democracy compels one to wonder why the majority should be given entitlement to any authority. Aristotle answers that, if a regime denies the multitude prerogatives, then it would be “necessarily filled with enemies,” risking rebellion (*Pol* 1281b28–30). Moreover, a multitude, regardless of its other positive or negative attributes, is a multitude of bodies, which a city needs for defense. Defense may not be forthcoming if the multitude is dissatisfied with the regime. Here the thought arises that, if the multitude were shrewd, they would stake their claim to rule not on majority opinion or freedom but on “military virtue” (*Pol* 1279b1–2).⁵⁸ But the many believe that the only way to serve themselves is to rule themselves, not to contribute to the needs of the regime.⁵⁹

⁵⁷ This remark is bracketed by Alois Dreizehnter in *Aristoteles’ Politik* (Munich: Wilhelm Fink Verlag, 1970) and others (see *Politics*, vol. 4, ed. Newman, 503, note on 1317b38; *Politics*, trans. Lord, 265 n. 8), indicating an interpolation.

⁵⁸ Especially since military virtue involves more than brute strength; by Aristotle’s account, it involves at least *thumos* (see Chapter 6, “Political Virtue: Virtue Redefined”) and perhaps also *sōphrosunē*. Vernant argues that these are two opposite military virtues; the warrior of the Homeric epic needed *thumos*, the hoplite, *sōphrosunē* (*Origins of Greek Thought*, 63).

⁵⁹ In claiming to rule themselves regardless of benefit, they reveal their tyrannical stubbornness. To the extent that a regime permits such assertion of will or “freedom,” it shares in tyranny (Mansfield, *Taming the Prince*, 48–49).

Although Aristotle's conclusion—that a regime, in order to survive, should allow money and free birth as well as virtue to entitle human beings to office—is a concession to the scarcity of virtue, a practical argument, he believes that a regime should seek justice or proportionate equality as much as possible within the limitations imposed by nature or chance. It may do so by making its deliberative offices open only to the virtuous or educated and the other, predominantly judicial offices open to others.⁶⁰ Such a policy may contribute to the duration of the regime as well. But polity is a durable form of regime also because it can be tailored to the attributes of a particular populace: in some polities, more offices must be open to free birth than to wealth or virtue; in others, more to wealth than to virtue. Still, legislators should aim for a good mixture: "It should be possible for the same polity to be spoken of as either a democracy or an oligarchy"; but where possible a polity should "be spoken of most particularly as aristocracy" (*Pol* 1294b15–16, 1294a23–24).

Polity lies between democracy and aristocracy, then, in recognizing but differentiating all claims to office.⁶¹ Democracy overlooks that a city cannot be self-sufficient without expertise (*Pol* 1277a5–11, 1273b5, 1261b14–15). How can individuals be "partners and helpers" to one another⁶² if none is very good at anything because all are at once free to live as they want but required to be available for political office? Falling short of self-sufficiency, not to say justice, democracy is not a durable sort of regime (*Pol* 1332b28–29, 1253a1, 1326a12–13). By contrast, polity is more viable (*Pol* 1294b34–40).

How can a regime distribute the most important offices to those worthy of them without instilling resentment and provoking unrest among those not worthy of them? Aristotle indicates that this task may be less difficult than it might seem. Contrary to Hobbes's later claim, not all people have an unceasing desire for power after

⁶⁰ Thus, we see that Aristotle agrees with Solon (see note 11, pp. 102–3).

⁶¹ Insofar as modern democracy recognizes merit—for example, requires lawyers, judges, and other civil servants to pass exams, or requires officials to be elected rather than chosen by lot—it "would have to be described with a view to its intention from Aristotle's point of view as a mixture of democracy and aristocracy"—in other words, as polity (Strauss, *City and Man*, 35). Because Aristotle realizes that the intention of elections (or exams) may not be fulfilled, he would consider them only a theoretically aristocratic mechanism (see *Politics*, vol. 2, ed. Newman, 374, note on 1273b39).

⁶² Plato, *Republic*, 369b–c.

power. In fact, “no one would ask for office unless he were honor-loving” (*Pol* 1271a15–16).⁶³ Desire for political recognition is not universal; some desire gain or pleasure instead or more. Legislators should not assume, then, that those not honored with office or an important office will be envious of or hostile toward those so honored.

Three sorts of people in particular prefer not to participate in political life. First, the poor would in fact rather work than either hold office or go to war.⁶⁴ They “are even glad if someone leaves them the leisure for their private affairs [*tois idiois*]” (*Pol* 1308b35–36, 1318b12–17, 1297b6–12). Second, the well-off are not always inclined to public service; having to or preferring to manage their business affairs, they sometimes swear that serving would cost them financially or impose other burdens.⁶⁵ Since the interests of the wealthy should be spoken for, a regime should not allow them to decline office, even if they pay a fine for not serving (1297a19–20). But it can be inferred that, if a regime is more in need of their money than of their service (or the services of all of them), then it should make the wealthy’s preference and ability to pay work to its advantage. Third, those who shun public service the most are the philosophical, those who find the greatest happiness in the activity of the intellect; for such activity thrives in solitude (*NE* 1177a12–b2, *Pol* 1267a10–11).

It should be observed that, although these different sorts of people desire particular ends—subsistence, wealth, thought—they all desire the opportunity to pursue a good. Privacy is, strictly speaking, a means to fulfill their desires; but insofar as means are bound to their ends, these people desire privacy itself as much as their particular ends. Further, insofar as the pursuit of their ends requires some form of virtue—industry, prudence, or the highest human capacity—they all desire privacy as Aristotle wishes us to

⁶³ Fortunately for regimes, there are people who are both virtuous and want to perform public service (*Pol* 1291a34–b2, 1324a29–32; *NE* 1177a30–31); “actions directed to honors and to what makes one well off are very noble in an unqualified sense. . . . they are providers and generators of good things” (*Pol* 1332a15–16, 18). Aristotle is not disparaging “honor-loving” *per se*.

⁶⁴ Assuming that, as was the case in Athens, the *per diem* compensation for public service was less than what could be gained or earned in a working day (*Pol* 1297b11–12, 1318b13–16). There would, however, be those among the poor who would prefer the compensation to work—the elderly, the very poor, and, one might add, the lazy (see Finley, *Democracy*, 118).

⁶⁵ See *Politics*, trans. Lord, 258 n. 45.

understand it. The paradox that the human desire for privacy makes political life possible thus emerges.

If there are, and surely there are, some among the less virtuous who demand to participate in political decision making, then legislators might do the following: either allow some number from the multitude to be elected to the deliberative body, or allow the people to consider issues that have already been considered by the members of a preliminary council, a council of law guardians or some such office. "In this way the people will share in deliberating but will not be able to overturn anything connected to the regime" (*Pol* 1298b27–32).⁶⁶

One might point out that, although the limited participation of the less virtuous serves the regime, the nonparticipation of the philosophical is not desirable; legislators should not welcome philosophers' reluctance to perform public service and should contrive a way to make them serve. But such demands are counterproductive, since public service interferes with the activity of philosophy. Rather, then, legislators should figure out a way for a regime to benefit from the wisdom of philosophers without invading their privacy. And perhaps Aristotle has suggested the way—by encouraging legislators to learn from ancient law or custom. For if we assume that the presence, writings, and teachings of philosophers influence ways of life,⁶⁷ then those ways of life as embodied in laws and customs may transmit the political teachings of philosophers. Philosophers perform their public service posthumously by leaving a legacy of political ideas. Thus, a regime may leave philosophers undisturbed while benefiting from philosophical wisdom. By leaving philosophers alone, then, a regime ensures its future or longevity.

⁶⁶ As Mansfield observes, "in advising that the power of rejecting be conceded to the demos, Aristotle recognizes the naysaying *thumos* of human beings; and also, without making a point of it, he admits the necessity of decrees despite the sovereignty of deliberation." In other words, Aristotle concedes the power of human nature and nature "to decree limits to human choice." Thus, choice "must rest content with having the first word" (*Taming the Prince*, 57–58).

⁶⁷ See Chapter 6, "Leisure: Private and Public Good," pp. 163–64.