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Introduction

A study of the notion of rights in classical Greek thought naturally focuses on Aristotle's ethics and politics. Plato's ethics show a much greater concern with people's interests than with their rights. In Plato, too, these interests are identified with reference to the community as a whole; that is, it is the good of the community that comes first in order of justification. As Julia Annas remarks in her *Introduction to Plato's Republic*, in Plato's ideal city "all classes are protected in freely having and doing what is necessary for them best to fill their social role."[1] At the same time, Plato believes that interests justified in this way (i.e. identified and determined with reference to their contribution to the common good) are people's true interests: his politics and ethics are therefore paternalistic and illiberal. As such, they do not allow for a theory of subjective rights as morally or legally sanctioned entitlements that are concerned with the individual qua individual, independently of the contribution that they might make to the common good. Plato's predecessors, for their part, had mainly focused on the relation between morality and self-interest and the potential conflict between the two. Whether it was seen as consisting in just behavior or in the unrestrained pursuit of one's own ambitions and desires, self-interest was the guiding principle of ethical thinking. It is only with Aristotle that the issue of subjective rights and their justification as the means of protecting individual interests becomes a central one in political and moral philosophy. This chapter examines both Aristotle's descriptive approach to the study of political theories and his theory of justice by focusing on the concept of *axia*, that is, the criterion by which rights are (or should be) attributed in different constitutions.

Legal Rights

As Myles Burnyeat aptly put it in a 1992 talk on BBC Radio 3, "there is no doubt" that rights understood generally as legally protected claims "exist in any interpersonal relationship of any kind."[2] Even the most primitive social order must include rules specifying that certain individuals or groups have special permission to perform certain actions. Moreover, even the most rudimentary human communities must have rules specifying that some are entitled to tell others what they must do. Such rules ascribe rights. In this sense, if we adopt a standard definition of subjective legal rights as claims, whether positive, with regard to others' performance, or negative, with regard to freedom from harm, ascribed to a subject by a legal norm, we shall not have to look very hard in order to find them enshrined in Aristotle's political theory. This is also the conclusion that Fred

Miller draws in his well-known defense of an Aristotelian theory of rights in his 1995 book, *Nature, Justice, and Rights in Aristotle's Politics*. In the passage quoted above, Burnyeat also indirectly refers to the so-called correlation of rights and duties, which is the core of Wesley N. Hohfeld's typology in his *Fundamental Legal Conceptions as Applied in Judicial Reasoning*.[3] Hohfeld's typology provides the framework of Miller's book-length study, as well as of his reply to critiques in an article ("Aristotle and the Origins of Natural Rights") that he published a year later.

Hohfeld illustrates fundamental legal relations by analyzing four basic elements (the Hohfeldian "incidents") and the different ways in which they correlate with or are opposed to each other. In his conceptualization, a right in the proper sense is a claim to which a duty is invariably correlated. However, the term "right" is also used (a) for "privilege," that is the opposite of a duty and the correlative of a no-right; (b) for (legal) "power," that is the opposite of (legal) disability and the correlative of liability; and (c) for "immunity," that is the negation of liability and the correlative of a no-power. Therefore, one has a claim right that another φ if and only if the other has a duty to one to φ; one has the privilege right to φ if and only if one has no duty not to φ; one has a power right if and only if one can alter one's own or somebody else's Hohfeldian incidents (e.g. as the owner of my laptop, I have the power right to sell it to another, thereby giving up my claim right against the buyer that they do not take possession of it and creating in the buyer a claim right that I give it to them); and one has an immunity right if and only if another lacks the ability to alter one's Hohfeldian incidents (e.g. if members of a legislature have parliamentary immunity they cannot be subject to inquiry or detention because of their opinions and actions as members of parliament). In sum, "a right is one's affirmative claim against another, and a privilege is one's freedom from the right or claim of another. Similarly, a power is one's affirmative 'control' over a given legal relation as against another; whereas an immunity is one's freedom from legal power or 'control' of another as regards some legal relation."[4]

Miller identifies and discusses four Aristotelian locutions that could be taken to correspond to the Hohfeldian incidents. Miller observes that the noun phrase *to dikaion*, which literally means "the just thing" or "the just," often occurs in connection with legal disputes and refers to what the judge establishes as the entitlement of each of the disputing parties, that is, to the legal enforcement of a right they have.[5] The judge settles the dispute according to justice when each of the litigants gets *to hautou*, that is, "their own," what they are entitled to. In the *Nicomachean Ethics*, for example, Aristotle says that

> when people are in dispute, they resort to the judge, and when they make their way to the judge they are making their way to what is just, for being a judge means being as it were the just in living form; and they seek out the judge as something intermediate

– sometimes judges are actually called "mediators," the thought being that if one succeeds in getting what is intermediate, one will get what is just. The just, then, is something intermediate, if in fact the judge is. What the judge does is equal things up; it is as if he were dealing with a line divided into unequal segments, taking away from the larger segment the amount by which it exceeds half of the line and adding it to the smaller segment. Whenever a whole is divided into two, people say they have what belongs to them. (*EN* 1132a19–28; trans. Rowe)

The same phrase, in different contexts, is used to refer to the right to participate in legal proceedings (e.g. *Pol*. 1275a9) and to disputes over the right to hold political offices (e.g. *Pol*. 1282b26, 29). In all these cases, an individual's *to dikaion* correlates with a duty upon somebody else, which is why Miller argues for its equivalence with a Hohfeldian claim right.

On the other hand, the term *exousia* indicates that a subject has the faculty to perform an action and therefore corresponds to a Hohfeldian privilege.[6] Miller argues that, in the *Politics*, Aristotle uses *exousia* and cognates to refer to political rights, such as the right to hold public office (e.g. 1275b18–19) and, in general, to share in the constitution (e.g. 1291b40–1, 1292a41), as well as to civil rights (e.g. the freedom to negotiate: 1316b3–5, or the right to marry: 1307a36–8).

Finally, equivalent to the Hohfeldian power right is the term *kurios*, indicating somebody's authority over a certain domain, individual, or group of people.[7] In turn, *akuros* (i.e. lack of authority) stands for the modern notion of legal disability and is the correlative of *adeia*, which corresponds to Hohfeld's notion of immunity.[8]

Miller's book and his attribution to Aristotle of a theory of rights sparked a lively debate, which is reflected in the many contributions to the Symposium devoted to Aristotle's *Politics* (and to discussing Miller's arguments) that appeared in the *Review of Metaphysics* in 1996. John Cooper, for example, argues that Miller has gone too far in granting Aristotle a genuine concern for subjective rights because, as readers of Hegel would know, the notion of subjective freedom which lies at the heart of modern conceptions of rights was unknown to the ancient Greeks.[9] Therefore, while illuminating in many respects, Miller's rights-based translations and interpretation of Aristotle's political theory overlook the fact that that theory is in fact more focused on creating the conditions for moral conduct than in allowing the exercise of one's own autonomy. In Aristotle's framework, Cooper claims, rights are, intrinsically, also opportunities to perform actions that are *required* by justice. *Pace* Cooper, however, theories of rights come in different varieties. Liberal and pluralist theories like those Cooper has in mind presuppose the value of subjectivity and protect it by means of the attribution of rights. But there are also different approaches, which do not ground rights in the protection of personal autonomy, independence, and free choice as ultimate values, but rather, as in Aristotle's account, in a particular understanding of human nature,

function, and flourishing. And it is legitimate to talk of rights within both frameworks, because the difference between them lies in the way they justify rights, not in whether they do or do not posit their existence. In this respect, far from being incompatible with a focus on individual rights, Aristotle's perfectionist ethics – the idea that human happiness can be achieved only if the individual behaves in such a way as to fulfill his own nature – justifies them. Aristotle's view of the human *ergon* and *eudaimonia* grounds the claim of each individual to self-realization. But self-realization is only possible, Aristotle thinks, in the intersubjective context of the political community: it requires conducting oneself in accordance with virtue and contributing to the common good by means of just behavior. As Miller observes in his reply to Cooper's criticism, Aristotle "subscribes to a *moderate individualist* theory of justice": he thinks of rights as ways of promoting the happiness of "each and every citizen" within the political community.[10] The *polis* exists for the sake of the good life, and human beings fulfill their nature by being part of it. As opposed to Plato, whose political theory prioritizes the "whole" and takes the realization of its ends as fundamental, for Aristotle individual happiness and the common good presuppose each other: for "it is not possible for the whole to be happy unless most or all of its parts, or some of them possess happiness" (*Pol*. 1264b17–18), and "the good life is the chief aim of society, both collectively and for all its members individually" (*Pol*. 1278b24–5).

A different kind of criticism is addressed to Miller by Malcolm Schofield.[11] Schofield's main point is that an appeal to the notion of rights does not add anything to our understanding of Aristotle's political theory that is not already covered by the notion of *axia*. Schofield understands *axia* in terms of "merit." Here, as I shall try to show, is where he goes wrong. *Axia* is first of all to be understood *formally* as a criterion by which rights (*time* and ¯*timai*, that is, one's claim to share in the constitution, as well as offices or marks of distinction) are attributed in different constitutions. Its substantive definition (that is, its *referent* or *content*) varies greatly: for example, it is based on wealth in oligarchies, freedom in democracies, and civic excellence in Aristotle's ideal constitution. Consider Aristotle's presentation of the debate on the particular understandings of equality in Books iii and v of the *Politics*, where he notices that different theories of justice identify different features as essential to equality (wealth in oligarchies, free birth in democracies, and so on). At 1282b20–2 he asks: "justice involves two factors – things, and those to whom things are assigned – and it considers that those who are equal should have assigned to them equal things. But equal and unequal in what?" The answer comes at 1301a26–35, where
Aristotle observes that

while everybody is agreed about justice, and the principle of proportionate equality, people fail to achieve it in practice. Democracy arose out of

an opinion that those who were equal in any one respect were equal absolutely, and in all respects. (People are prone to think that the fact of their all being equally free-born means that they are all absolutely equal.) Oligarchy similarly arose from an opinion that those who were unequal in some one respect were altogether unequal. (Those who are superior in point of wealth readily regard themselves as absolutely superior.) Thus those on one side claim an equal share in everything, on the ground of their equality, while those on the other press for a greater share, on the ground that they are unequal, since to be greater is to be unequal. (trans. Barker)

These passages make it very clear that in constitutions as different as democracy and oligarchy the attribution of rights is still *kat'axian*, while the grounds for *axia* do, of course, vary very significantly. This is why *axia* cannot and should not be understood exclusively in terms of "merit" (nor, for that matter, in any other substantive way, since the grounds for it are different in different constitutions). Therefore, Schofield is certainly right when he emphasizes that, in Aristotle's framework, the idea of *axia* is what determines one's access to rights in a given constitution.[12] What he does not see is that this is not an argument against Miller's thesis that Aristotle had a theory of rights. Exactly the same logic applies to modern theories of rights – it is just that the latter have made their substantive definition of *axia*, that is of the criterion by which rights should be attributed, much more inclusive than Aristotle thought it should or ever would be.[13] As I shall try to show in this chapter, what has historically changed is the reference of the criteria by which rights are ascribed (or by which "those who are equal" are identified),[14] but the logical structure of the process of rights ascription has remained the same. We shall notice that modern conceptions of human rights are based on the identification of the one feature (being human) that entitles an individual to subjective rights. Both ancient and modern theories are therefore status theories: they are centered on the attribute(s) that one must have to make it appropriate (or just) to be accorded rights. What different theories disagree on is what these attributes are. A comparison with reference to the notion of citizenship is perhaps even more illustrative. All the political regimes that Aristotle describes allowed citizens to "share in the constitution" (i.e. attributed political rights to them), but differed in the way they identified who the citizens were: "the citizen is, in general, one who shares in the civic life of ruling and being ruled in turn. But this varies from constitution to constitution" (*Pol*. 1283b42–a1; trans. Barker). At *Politics* 1290a7–11 Aristotle explains that "a constitution is an arrangement in regard to the offices of the city. By this arrangement the citizen body distributes office, either on the basis of the power of those who participate in it, or on the basis of some sort of general equality (i.e. the equality of the poor, or of the rich, or an equality existing among both rich and poor)." As it happens, "people do not all agree that the same person is a citizen; it may be that someone who is a citizen in a democracy is not one in an oligarchy" (*Pol*. 1275a2–5; trans. Barker) and, therefore, "the citizen under each different kind of constitution must also be necessarily different" (*Pol*. 1275b4–5; trans. Barker). Aristocratic

constitutions, for example, distribute offices on the bases of worth and excellence (*Pol*. 1278a19–20), while in oligarchic constitutions, participation in offices depends on property (*Pol*. 1278a21–2). In the same way, those who enjoy political rights in contemporary Western democracies are the "citizens" and the criterion by which they are identified is still based on the requirement that they should possess some specific property (neither excellence nor wealth but, for example, being born within the boundaries of a given state or having a parent who is a citizen of that state). Schofield is right in suggesting that Aristotle's theory should be analyzed in light of the notion of *axia*, which is the criterion for the attribution of rights and determines who is to be considered "equal." Still, this is an appropriate approach not only to Aristotle's theory, but to modern theories of rights as well. Therefore, Schofield is wrong to state that

> if he [Aristotle] thinks in terms of worth or desert, it is not, at the end of the day, very helpful to recast that thinking in terms of rights … Since "(a) right" in contemporary English usage would ordinarily be thought to *contrast* with "worth" or "desert," it would need to be explained that Aristotle's right-based theory is a particular sort of right-based construct – a worth- or deserts-based theory.[15]

Any conception of rights stems from a theory of justice. The nature of rights, their place and function within a political theory, depends on the theory of justice that generates them and, crucially, on the criterion that is established for their attribution. This criterion is *axia*, both for Aristotle and for us. What changes is its reference, that is what different theories mean by it.

Natural Rights

Miller's thesis, however, is not just about Aristotle's familiarity with the notion of legal rights, but about his development of a theory of natural rights. Aristotle is aware that what is legal (and legally valid) and what is (naturally) just are theoretically distinct domains that ideally, but not necessarily, coincide. This awareness provides the background for his discussion of slavery in Book i of the *Politics*, for example. In this context, Aristotle mentions that some "regard the control of slaves by a master as contrary to nature. In their view, the distinction of master and slave is due to law or convention; there is no natural difference between them: the relation of master and slave is based on force, and so has no warrant in justice" (*Pol*. 1253b20–2 trans. Barker). He proceeds to consider what the nature of a slave is: "anybody who by his nature is not his own man, but another's, is by his nature a slave; anybody who, being a man, is an article of property is another's man; an article of property is an instrument intended for the purpose of action and separable from his possessor" (*Pol*. 1254a14–16; trans.

Barker). More specifically, "all men who differ from others as much as the body differs from the soul, or an animal from a man (and this is the case with all whose function is bodily service, and who produce their best when they supply such service) – all such are by nature slaves" (*Pol*. 1254b16–19; trans. Barker). For them "slavery is the better and just condition" (*Pol*. 1254a18), "beneficial and just" (*Pol*. 1255a2). Nonetheless, Aristotle admits, "there is also a kind of slave and of slavery which owes its existence to law. The law in question is a kind of understanding that those vanquished in war are held to belong to the victors (*Pol*. 1255a5–7; trans. Barker). Law is "a sort of justice" (*Pol*. 1255a21), but it does not necessarily coincide with what is naturally just. In fact, there are some, even among the wise, who make an argument against the legal convention of enslaving war prisoners precisely on these bases (*Pol*. 1255a7–12).[16]

In Book v of the *Nicomachean Ethics* Aristotle addresses explicitly the issue of the difference between legal and natural justice. He argues against the claim, held by some, that only legal justice really exists because what is natural is immutable and, therefore, if there were laws inspired by natural justice, they would be the same everywhere in the world. His argument is that "among human beings, while there is such a thing as what is by nature, still everything is capable of being changed – and yet, despite this, there is room to apply a distinction between what is by nature and what is not by nature" (*EN* 1134b29–30; trans. Rowe). Here, Aristotle does not tell us what natural justice consists in, or what the laws are that embody it in a constitution, but he makes it very clear that he is aware of the difference between the two domains, that of legality and that of (natural) justice. Natural justice, which is rooted in human nature and brings about its fulfillment, can be instantiated differently in different legal systems. At the same time, as we shall shortly see, it serves as a normative ideal to distinguish right constitutions from deviant ones.

The same awareness of the (potential) gap between legal and natural forms of justice informs Aristotle's approach to the issue of citizenship. When examining the criteria for citizenship attribution in Book iii of the *Politics*, he observes that, on a descriptive level, one is justly (*dikaios̄*) a citizen when the norm that makes one such is legally valid. This can be tricky, because legal validity depends on the norm being established within the framework of a constitution. Since constitutional changes might entail significant alterations of the form of government (e.g. an aristocracy can turn into an oligarchy or a tyranny), assessing whether an act is legally valid can sometimes be a difficult task (i.e. it might be unclear whether an act of the state is valid when the state has turned into a completely different kind of constitution).[17] Nonetheless, in general terms and leaving these problems aside, justice can be spoken of merely in terms of legal validity (*Pol*. 1275b34–1276a16). But on a normative level Aristotle takes a

different perspective and inquiries into who the citizens should be under the best constitution.

Natural justice sets the standard by which correct constitutions can be distinguished from deviant ones and legal rights can be assessed as merely valid or truly just. This inquiry is grounded in Aristotle's teleological conception of natural justice as the end and fulfillment of human beings and of the associations they form, as well as in the observations concerning the political nature of the human species that he provides us with in Book i of the *Politics*. In this framework, the natural and the political coincide: humans are by nature political animals and their impulse to associate is natural.[18] Human nature can only

be fulfilled in the realms of the political association and those who cannot or do not need to be part of a community are not human, but either beasts or gods. The final and perfect association (*koinonia teleios*̄) is the city (*polis*), which exists for the sake of the good life. Crucially, for Aristotle, nature is not a starting point, but an end: "the nature (*physis*) of things consists in their end (*telos*); for what each thing is when its growth is completed we call the nature of that thing. The end, or final cause, is the best" (*Pol*. 1252b32–1253a1; trans. Barker). Natural justice, therefore, is natural because it is based on human nature, not because it is pre-political.[19]

Because of the identity of the natural and the political, some modern interpreters have denied the existence of the notion of natural rights in Aristotle's philosophy. For example, according to Leo Strauss in *Natural Right and History*

> the tradition which Hobbes opposed had assumed that man cannot reach the perfection of his nature except in and through civil society and, therefore, that civil society is prior to the individual. It was this assumption which led to the view that the primary moral fact is duty and not rights. One could not assert the primacy of natural rights without asserting that the individual is in every respect prior to civil society: all rights of civil society or of the sovereign are derivative from rights which originally belonged to the individual.[20]

It is obvious that natural rights so understood cannot exist for Aristotle, precisely because he does not conceive of individuals as opposed to the state, but only within the state. But his conceptualization of natural justice, which is based on the political character of human nature, informs his analysis of what the criteria of rights attribution should be. Aristotle thinks that everybody agrees on them abstractly, but that different theories of justice underlying different constitutions substantiate them in different ways. He develops his normative view about this in the *Nicomachean Ethics*, when discussing the notion of justice as fairness, and in the *Politics*, when presenting his theory of citizenship and of constitutions.

Justice as Fairness

In Book v of the *Nicomachean Ethics* Aristotle provides us with a sophisticated analysis of the virtue of justice, of which he identifies two forms. General justice consists in the exercise of virtue in intersubjective relationships. Excellences of characters can in fact be exercised in a simple, unqualified way that is centered on the virtuous man's own motives. But they can also be directed toward another (*pros heteron*) and, for Aristotle, other-directedness is the distinctive feature of "general justice" (*EN* 1129b25–7):

> This justice, then, is not a part of excellence, but excellence as a whole … excellence and justice of this sort differ from each other: while it is the same disposition, what it is to be the first is not the same as what it is to be the second; rather, in so far as the state relates to another person, it is justice, while in so far as it is this sort of disposition without such a qualification, it is excellence. (*EN* 1130a8–13; trans. Rowe)

But there is another, more specific way to be just (or unjust) which corresponds to the exercise, vis-à-vis another, not of all virtues (or vices), but of a part of virtue (or vice). This type of justice consists in fairness and equality: it "has to do with honour, or money, or security (or whatever single term might be available to cover all these things)" and its violation also constitutes a particular form of vice, because it is specifically motivated by "the pleasure that comes from profit" (*EN* 1130b1–5; trans. Rowe). Such particular kind of justice is in turn divided into two subcategories: distributive justice, which concerns the "distributions of honour, or money, or the other things to be divided up among those who are members of the political association (for in the case of these things it is possible for one person to have either an unequal or an equal share in relation to another)" (*EN* 1130b2–3; trans. Rowe) and involves proportional equality, and corrective justice, which has to do with rectifications and involves numerical equality. And proportional or numerical equality are among the conditions, together with freedom and life in common aiming at self-sufficiency, for political justice (*EN* 1134a26–30). Corrective justice restores equality by attending only to the damage that has been done and "it makes no difference whether a decent person has defrauded a worthless one or a worthless person a decent one" (*EN* 1132a2-4, trans. Rowe). On the other hand, distributive justice aims at fairness: that is, not at numerical equality but rather at equality proportionate to worth (*kat'axian*).

Now, as mentioned earlier, Aristotle thinks that "everybody agrees that what is just in distributions must accord with some kind of *axia*, but everybody is not talking about the same kind of *axia*: for democrats *axia* lies in being born a free person, for oligarchs in wealth or, for some of them, in noble descent, for aristocrats in excellence" (*EN* 1131a25–9; trans. Rowe, slightly modified). *Axia*, that is, the criterion by which citizens are identified and rights are attributed to them, depends on the theory of justice embodied by different constitutions and its

substantive definition varies accordingly. Cases of variability in reference to *axia* in different constitutions are discussed in Book iii of the *Politics*. For example, in aristocracies, political rights are distributed on the bases of excellence (*kat'areten̄*). It follows that they are not attributed to mechanics and laborers who, due to their life of manual toil, have no means to engage in that kind of conduct in which excellence is exercised. In oligarchies, on the other hand, political rights are attributed on the basis of property qualification and, therefore, mechanics may qualify for citizenship, since they often become quite rich (*Pol*. 1278a15–25). Aristotle's theory of constitutions is centered on the identification of this crucial difference in their corresponding theories of justice: How do they define (substantively) the criteria by which those who are equal are distinguished from those who are not? How do they define (substantively) the criteria by which rights are attributed? In Aristotle's own words:

> the reason why there is a variety of different constitutions is the fact, already mentioned, that while everybody is agreed about justice, and the principle of proportionate equality, people fail to achieve it in practice. Democracy arose out of an opinion that those who were equal in any one respect were equal absolutely, and in all respects. (People are prone to think that the fact of their all being equally free-born means that they are all absolutely equal.) Oligarchy similarly arose from an opinion that those who were unequal in some one respect were altogether unequal. (Those who are superior in point of wealth readily regard themselves as absolutely superior). Thus those on one side claim an equal share in everything, on the ground of their equality, while those on the other press for a greater share, on the ground that they are unequal, since to be greater is to be unequal. (*Pol*. 1301a25–35; trans. Barker)

We have seen that Aristotle is aware of the difference between legal and natural justice. Therefore, besides offering the descriptive approach to the study of constitutions that we have just reviewed, he is in a position to develop a normative theory of justice and a prescriptive conception of the mechanism of rights attribution. Indeed, in the *Politics*, he explicitly indicates what the just criterion by which rights should be attributed consists in. His analysis is premised upon the following consideration: "The good in the sphere of politics is justice; and justice consists in what tends to promote the common interest" (*to koine sympheron̄*). Justice consists in some sort of equality (*ison ti*), it "involves two factors – things, and those to whom things are assigned – and it considers that those who are equal should have assigned to them equal things" (*Pol*. 1282b16–21; trans. Barker). But equal and unequal in what? What is needed is a substantive definition of the criterion by which offices and honors are distributed. In its abstract form, the criterion establishes that justice as fairness consists in the distribution of offices and honors based on *axia*. What exactly does *axia* consist in? As we have already seen, the answer to this question depends on the theory of justice that each constitution embodies: "a just distribution is one in which there is proportion between the things distributed and those to whom they are distributed, a point

which has already been made in the *Ethics*. There is general agreement about what constitutes equality in the thing, but disagreement about what constitutes it in people" (*Pol*. 1280a16–19; trans. Barker). For Aristotle, the right answer is that claims to equality "must be based on the elements which constitute the being of the city" (*Pol*. 1283a14–15; trans. Barker). He expands on this statement as follows:

> There are thus good grounds for the claims to honour which are made by people of good descent, free birth, or wealth, since those who hold office must necessarily be free men and pay the property assessment … But we must add that if wealth and free birth are necessary elements, the qualities of being just and being a good soldier are also necessary. These too are elements which must be present if people are to live together in a city. The one difference is that the first two elements are necessary for the simple existence of a city, and the last two for its good life. (*Pol*. 1283a16–22; trans. Barker)

According to Aristotle, therefore, it is civic excellence that should be used as the criterion of just distribution:

> A city is constituted by the association of families and villages in a perfect and self-sufficing existence; and such an existence, on our definition, consists in living a happy and truly valuable life. It is therefore for the sake of actions valuable in themselves, and not for the sake of social life, that political associations must be considered to exist. Those who contribute most to this association have a greater share in the city than those who are equal to them (or even greater) in free birth and descent, but unequal in civic excellence, or than those who surpass them in wealth but are surpassed by them in excellence. (*Pol*. 1280b40–1281a8; trans. Barker)

True justice thus consists in attributing the largest share of offices and honor to those who contribute most to the realization of the city's purpose, that is, the good life.

"Equality for Those Who Are Equal"

A project seeking to chart the history of the concept of rights can profitably be centered on the analysis of the criteria of rights attribution.[21] In fact, as mentioned above, the difference between ancient legal systems (and, more specifically for our purposes, the legal systems that Aristotle had in mind) and modern and contemporary ones does not depend on the criteria by which rights were (or are) attributed, but rather on the reference of these criteria. In other words, what has historically changed is neither the existence of rights (as positive or negative claims that legal norms ascribe, or should ascribe, to a subject) nor the fact that they are logically predicated on (some kind of) equality (or universality). What has changed is the degree of extension of such equality: because it is status-based,

that is, because it is grounded on the identification of the feature(s) one must possess in order to make it appropriate to attribute one rights and respect them, the content of the notion of equality is historically variable. Acknowledging this is important, and not only for the purposes of historical research. In fact, much as contemporary liberal democracies are significantly more inclusive than ancient Greek city-states, the notion of equality (and universality) to which they appeal has the same logical structure as the ancient Greek one. This means that it entails the same potential for exclusion, depending on the kinds of status relative to what it is predicated on. In contemporary liberal democracies, the attribution of fundamental rights is typically based on the recognition of three different kinds of status: personhood, citizenship, and the capacity to act. Possession of one or more of these statuses is a condition for the ascription of rights. Accordingly, human rights (e.g. the right to life) belong to natural persons as such, public rights (e.g. the right to freedom of movement) belong to natural persons as citizens, civil rights (e.g. the right to marry) belong to natural persons who are capable to act, and political rights (e.g. the right to vote and stand as a candidate) belong to citizens who are capable to act. And, while, in contemporary Western democracies, the definition of "person" is maximally inclusive (even if still debated in some domains, e.g. with reference to fetuses), that of citizen is far from being universal and on a daily basis we witness the discriminatory consequences of a system of rights attribution that appeals to a state-based citizenship. It is easy to see how, in the Aristotelian framework, the attribution of rights is based on the recognition of very similar kinds of statuses. Diachronic comparison shows that it is the way they were attributed to the various members of the city that was different, and much more restrictive, from ours. And a comparison between the various constitutions classified in the *Politics*, including Aristotle's ideal one, shows that they differ in relation to the theory of justice on which they are based, that is, in relation to the criteria they appeal to in order to establish who is "equal," which are also the criteria by which rights are attributed.

An important part of Book i of the *Politics* is dedicated precisely to an inquiry into what differences between human beings are to be considered relevant for the attribution of rights. Different kinds of rule (despotic, marital, paternal) correspond to the nature of those who, by nature, are intended to be ruled (slaves, women, children). The latter must share in virtue to the extent required for them to be ruled properly. On the other hand, those who, by nature, are intended to rule share in that specific kind of virtue that belongs to the rational part of the soul. In fact, Aristotle thinks that human beings, no matter what class (e.g. freeman, slave, woman) they belong to

possess in common the different parts of the soul; but they possess them in different ways. The slave is entirely without the faculty of deliberation; the female indeed possesses it, but in a form which lacks authority; and children also possess it, but only

in an immature form. We must assume that the same holds with regard to moral goodness: they must all share in it, but not in the same way – each sharing only to the extent required for the discharge of his or her function. The ruler, accordingly, must possess moral goodness in its full and perfect form, because his function is essentially that of a master-craftsman, and reason is such a master-craftsman; but other people need only to possess moral goodness to the extent required of them. (*Pol*. 1260a10–20; trans. Barker)

The difference between adult men, women, and slaves in the exercise of cognitive faculties needs first of all to be mirrored in the arrangement of power relationships between them. This, of course, entails disparities in what they have the faculty to do, in their liberties, and in their entitlements; that is, in the rights that are, or should be, attributed to them. This is Aristotle's way of marking out differences of status that are interestingly similar to those still in use, that is, personhood, citizenship, and the capacity to act. So, for example, women's status is that of, so to speak, "natural persons" whose capacity to act is limited: they can engage in means–end reasoning but cannot be trusted to act on their decisions. As a consequence, while it is their task to preserve men's possessions, they should not have their own property (*Pol*. 1277b20–5). In this respect, Aristotle is very critical of Sparta, where women were allowed many liberties as well as property rights (*Pol*. 1269b12–1270a11). Besides, women cannot enjoy the status of citizens and do not have political rights because their deficiencies in the faculty of deliberation make them incapable of ruling. The same (and more) is true of slaves, who qualify as "natural persons" (and enjoy some corresponding rights, such as that to life) but not as citizens or as subjects capable to act. Resident aliens can be accorded the right to initiate a plaint (even if they are usually obliged to choose a legal protector: *Pol*. 1275a12–13), but without the status of citizen they do not have political autonomy and therefore cannot hold office (1278a34).

In Aristotle's ideal constitution, the attribution of statuses, and corresponding rights, to the members of a community depends on the quality of their contribution to its welfare. As in natural compounds, in the city too there are conditions which are necessary for the existence of the whole without being parts of the whole:

> we cannot regard the elements which are necessary for the existence of the city, or of any other association forming a single whole, as being "parts" of the city or of any other association … Now there is nothing joint or common to the means which serve an end and the end which is served by those means – except that the means produce and the end takes over the product … Thus, while cities need property, property is not part of the city. It is true that property includes a number of animate beings, as well as inanimate objects. But the city is an association of equals;[22] and its object is the best and highest life possible. The highest good is happiness; and that consists in the actualization and perfect practice of goodness. But, as things happen, some may share in it fully, but others can only share in it partially or cannot even share at all. (*Pol*. 1328a24–40; trans. Barker)

Axia, in Aristotle, is defined in terms of civic excellence. Rights are therefore to be attributed accordingly. And because the happiness of the community is dependent on that of the individuals who constitute it,[23] in Aristotle's ideal constitution the attribution of rights protects individual welfare by allowing rights-holders to contribute to the common good and, while doing so, to fulfill their own nature and flourish.

Notes

1 J. Annas, *An Introduction to Plato's Republic* (Oxford, Clarendon Press, 1981), p. 177.

2 M. F. Burnyeat, "Did the Ancient Greeks Have the Concept of Human Rights?," script of a talk given on BBC Radio 3, April 9, 1992.

3 W. N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (New Haven, CT, Yale University Press, 1919).

4 Hohfeld, *Fundamental*, p. 60.

5 Fred D. Miller, *Nature, Justice, and Rights in Aristotle's Politics* (Oxford, Clarendon Press, 1995), pp. 97–101.

6 Miller, *Nature*, pp. 101–4.

7 Miller, *Nature*, pp. 104–5. 8 Miller, *Nature*, pp. 105–6.

9 J. M. Cooper, "Justice and Rights in Aristotle's 'Politics,'" *Review of Metaphysics* 49 (1996), 859–72.

10 F. D. Miller, "Aristotle and the Origins of Natural Rights," *Review of Metaphysics*. 49 (1996), 873–907, at 877–8.

11 M. Schofield, "Sharing in the Constitution," *Review of Metaphysics* 49 (1996), 831–58. On Schofield's criticism, see also Chapter 4 in the present volume.

12 Schofield, "Sharing," 852–3.

13 On the meaning, and implications, of *axia*, see also Chapter 4.

14 What in contemporary political philosophy is called "the basis of equality" (see most notably J. Rawls, *A Theory of Justice. Revised Edition* [Cambridge, MA, Harvard University Press, 1999]).

15 Schofield, "Sharing," 856.

16 Miller, *Nature*, pp. 108–9.

17 Aristotle makes the example of Cleisthenes, who enrolled in the tribes a number of resident aliens by virtue of a legal change in the constitution.

18 Human beings are not the only animals whose nature is political. As Aristotle explains in the *Historia animalium*, being political animals means having a common function (κοινὸν ἔργον: *HA* 488a 7–8). This is true of human beings, but also of bees, wasps, ants, and cranes. Human beings, nonetheless, are political to a higher degree (μᾶλλον) than other political animals because they are the only ones who possess *logos*, that is, the capacity to exercise reason through speech within their community:

> It is thus clear that man is a political animal, in a higher degree than bees or other gregarious animals … man alone of the animals is furnished with the faculty of language. The mere making of sounds serves to indicate pleasure and pain, and is
>
> thus a faculty that belongs to animals in general … But language serves to declare what is advantageous and what is the reverse, and it is the peculiarity of man, in comparison with other animals, that he alone possesses a perception of good and evil, of the just and the unjust, and other similar qualities; and it is association in these things which makes a family and a city. (*Pol*. 1.2, 1253a 7–19; trans. Barker)

19 In this regard, talking of rights, Miller distinguishes between natural$_1$ and natural$_2$ rights:

a natural$_1$ right is based on natural justice; a natural$_2$ right is possessed in a state of nature, i.e., in a pre-political state. The senses are not equivalent, because the political rights which a citizen possesses in a just polis may be natural$_1$ without being natural$_2$. Moreover, modern theories of natural$_2$ rights typically treat rights as universal and inhering in human beings as such apart from any social or political relations. Natural$_1$ rights have no such implications. (1995: 88)

20 L. Strauss, *Natural Right and History* (Chicago, University of Chicago Press, 1953), p. 183.

21 21 The above quote is from *Pol*. 3.9. 1280a 11–13: "justice is considered to mean equality. It does mean equality – but equality for those who are equal and not for all. Again, inequality is considered to be just; and indeed it is – but only for those who are unequal, and not for all." (trans. Barker)

22 Infamously, by "equals" Aristotle means, at a minimum, only free men.

23 e.g. *Pol*. 2.5, 1264b 17–22: "it is not possible for the whole to be happy unless most or all of its parts, or some of them possess happiness. For happiness is not a thing of the same sort as being an even number: that may belong to a whole but not to either of its parts, but happiness cannot belong to the whole and not to its parts" and *Pol*. 3.6, 1278b 21–5: "they [men] are brought together by common interest, so far as each achieves a share of the good life. The good life then is the chief aim of society, both collectively and for all its members individually" (trans. Barker).

Further Reading

Annas, J., *An Introduction to Plato's Republic* (Oxford, Clarendon Press, 1981).

Cooper, J. M., "Justice and Rights in Aristotle's 'Politics,'" *Review of Metaphysics* 49 (1996), 859–72.

Hohfeld, W. N., *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (New Haven, CT, Yale University Press, 1919).

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