


12-2005

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Thornton C. Lockwood
Fordham University, thorntonlockwood@gmail.com

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Recommended Citation

Lockwood, Thornton C., "Physis and Nomos in Aristotle's Ethics" (2005). *The Society for Ancient Greek Philosophy Newsletter*. 327.
<https://orb.binghamton.edu/sagp/327>

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Phusis and *Nomos* in Aristotle's Ethics

By Thornton C. Lockwood, Jr.¹

SAGP at Eastern Division, American Philosophical Association, New York, 2005

The relationship between nature and normativity in Aristotle's practical philosophy is problematic. On the one hand, Aristotle insists that ethical virtue arises through the habitual repetition of ethically good actions, and thus no one is good or virtuous by nature. *Phusikê aretê* or "natural virtue" is more like cleverness (*deinotês*) than prudence (*phronêsis*) and it can result in wrong actions.² Yet on the other hand, at times Aristotle appears to use nature to justify normative claims. Thus, in the *Ethics* Aristotle distinguishes between natural and unnatural pleasures, and he claims that what is truly good is that which is pleasing by nature to the *spoudaios* or excellent man; in the *Politics* he claims that all deviant regimes-types are contrary to nature (*para phusin*) and that for equals to have unequal shares is contrary to nature, and nothing contrary to nature is noble or fine.³ In such instances, the use of "by nature" or "contrary to nature" point to the end or perfection of human nature. Thus the problem with Aristotle's use of the notion of nature in his practical philosophy is that in some instances what is natural seems to be ethically neutral, but in other instances it seems to set the standard for human perfection.

Modern Aristotle exegetes have sometimes argued that Aristotle must, consciously or not, be using the term "nature" in at least two different senses here. To use the language of Julia Annas, when Aristotle talks about "natural virtue" in the sense of the talents or abilities which one possesses from birth, he has in mind the notion of "mere nature," but when he discusses the perfections which a virtuous individual enjoys by his or her nature, Aristotle has in mind the notion of nature as an "ethical ideal."⁴ There is nothing unusual about Aristotle using the same term in several different senses, and of course he devotes an entire book of his *Metaphysics* to distinguishing the different senses of various philosophical concepts, including a chapter which discusses the different senses of *phusis* relevant to theoretical investigation.⁵ Nonetheless, in the case of the notion of nature in the *Ethics*, one can sympathize with Annas' observation that "it is a pity that Aristotle does not explicitly mark the difference."⁶

I would like to suggest an alternative solution to the problem of reconciling Aristotle's different senses of nature in his *Ethics*. In *Nicomachean Ethics* V.7, Aristotle claims that political justice (*to dikaion politikon*) possesses a "natural" (*phusikon*) part and a "conventional" (*nomikon*) part.⁷ In response to those who separated nature and convention and disparaged the latter because it was different from place to place, Aristotle claims that both nature and convention admit of variation, and his language suggests that the two are ultimately parts which need

¹ Fordham University, Department of Philosophy, Collins Hall, 441 E. Fordham Road, Bronx, NY 10458, USA.
Email: lockwood@fordham.edu

² *EN* II.1.1103a17-26; VI.13.1144b4 ff; cf. V.1.1129a12-17. Citations from Aristotle's *Nicomachean Ethics* derive from the Greek text of *Aristotelis Ethica Nicomachea*, ed. I. Bywater (Oxford, 1894). In the *Politics*, Aristotle points out that although other animals live primarily according to nature, humans are able to act "contrary to acquired habits and nature (*para tous ethismous kai tèn phusin*) because of reason (*logos*) (*Pol* VII.12.1332b3-8; cf. *EN* X.9.1179b20-31). Citations from Aristotle's *Politics* derive from the Greek text of *Aristotelis Politica*, ed. W.D. Ross (Oxford, 1957).

³ *EN* VII.5.1148b15-20; IX.9.1170a13-15; *Pol* III.17.1287b41-42; VII.3.1325b7-10.

⁴ J. Annas, *Morality of Happiness* (Oxford, 1993) pp. 142-58 and "Ethical Arguments from Nature: Aristotle and After," in *Beiträge zur antiken Philosophie*, ed. H.C. Gunther and A. Rengakes (Stuttgart, 1997), pp. 185-97. See also T. Irwin, *Aristotle Nicomachean Ethics* (Indianapolis, 1985), pp. 416-17; F. Miller, *Nature, Justice and Rights in Aristotle Politics* (Oxford, 1995), pp. 44-45.

⁵ *Meta* V.4.1014b16-15a19; cf. *Phy* II.1.192b8-3a9. I discuss below the relevance of Aristotle's theoretical account of nature in his practical works.

⁶ Annas, *Morality of Happiness*, p. 147.

⁷ *to de politikou dikaiou to men phusikon esti to de nomikon* (*EN* V.7: 1134b19-20).

to be interwoven or combined. Scholars who have struggled with Aristotle's apparently disparate senses of the idea of nature have assumed that nature is an ethical ideal which can be separated from and serve as a guide for that which is merely conventional.⁸ I argue that when Aristotle invokes what is "natural" as a norm, he does so under the assumption that the natural component of a norm is ultimately separable from its conventional part only in abstraction. Just like the syllable "BA" is not reducible to the letters "b" and "a," but instead is a whole greater than its two parts, political justice is a composite unity of nature and convention which, in unifying the two parts, transforms them.⁹

To defend my solution to the problem of the apparently inconsistent senses of nature which Aristotle uses in his practical philosophy, I first survey the different ways which Aristotle uses the terms *phusis* and *nomos* (and their cognates) in his *Ethics*. Although it is true that Aristotle distinguishes between "mere nature" and "ethical nature," there is a third relevant sense of nature at play in the *Ethics*, namely that which is usual or universal, and it is necessary to explain the place of generalizations about human nature within the *Ethics*. Second, I show that the different sense of *phusis* and *nomos* are in fact interrelated through an examination of Aristotle's account of ethical habituation, since it is the laws and customs of a society which transform mere nature into ideal nature. Third, I argue that the account of *phusis* and *nomos* in *EN V.7* illustrates how the two concepts are entwined into a composite unity. Although Aristotle may never explicitly distinguish the different senses of nature in his *Ethics*, right in the center of the *Ethics* he does explain the relationship between *phusis* and *nomos*, and I argue that *EN V.7* is proof that he does not conceive of nature as a source of positive normativity independent from convention. Finally, in my conclusion I claim that when nature is isolated from custom, it only supplies prohibitions about what is forbidden rather than guidance about what one should do.

PART I: THE DIFFERENT SENSES OF *PHUSIS* AND *NOMOS* IN THE *ETHICS*¹⁰

Although scholars have ably distinguished different clusters of meanings of the terms *nomos* and *phusis* in Aristotle's writings, it is desirable to build upon past analyses of the terms for two reasons.¹¹ First, opposing "mere nature" to "ideal nature" obscures the fact that there is a relevant third sense of nature at work in the *Ethics*, namely the sense in which nature indicates what is "usual" or for the most part. Nature, in this sense, is closely related to the

⁸ See, for instance, J. Roberts, "Justice and the Polis," and F. Miller, "Naturalism," in the *Cambridge History of Greek and Roman Political Thought*, ed. C. Rowe and M. Schofield (Cambridge, 2000), pp. 345-46, 321-43. Annas goes so far as to claim that ideal nature "can point beyond convention and existing institutions... We can appeal beyond them to the idea of human nature as it would be if we did not have those practices and institutions" ("Arguments from Nature," pp. 196-97).

⁹ Cf. *Meta* VII.17.1041b11-33.

¹⁰ In my survey of the senses of *phusis* and *nomos* I have focused primarily upon the way the terms are used in only the *Nicomachean Ethics*, with occasional illustrations from the *Politics* and the *Eudemian Ethics*. Scholars have wondered whether the sense of nature in the *Politics* is the same as that which is found in the *Ethics*, and it is beyond the scope of this paper to examine that question in a detailed fashion. (See further Annas, *Morality of Happiness*, pp. 149-58; G.E.R. Lloyd, "The Idea of Nature in the *Politics*," in his *Aristotelian Explorations* [Cambridge, 1996], pp. 184-204; and K. von Fritz and E. Kapp, "The Development of Aristotle's Political Philosophy and the Concept of Nature," in *Articles on Aristotle*, vol. 2, *Ethics and Politics*, eds. J. Barnes, M. Schofield, and R. Sorbaji [London, 1977], pp. 113-34.) Further, the use of *phusis* and *nomos* in the *Rhetoric* and the *Magna Moralia* is markedly different at crucial points (see especially *MM* I.33.1195a1 ff. and *Rhet.* I.13.1373b1 ff.; cf. F. Miller, "Aristotle on Natural Law and Justice," in *A Companion to Aristotle's Politics*, eds. D. Keyt and F.D. Miller [Cambridge, 1991], pp. 282-89; M. Salomon Shellens, "Aristotle on Natural Law," *Natural Law Forum* 4 [1959]: 72-100; and M. Hester, "Aristotle on Change in Justice in the *Nicomachean Ethics*," *Skepsis* 12 (2001): 181-92). For a survey of the use of nature in *EN* and *EE*, see J.F. Balaudé, "Nature et norme dans les traités éthiques d'Aristote," in *Aristote et la notion de nature*, ed. P.M. Morel (Bordeaux, 1997), pp. 95-129.

¹¹ See further T. Irwin, *Aristotle Nicomachean Ethics*, pp. 416-17; cf. H. Bonitz, *Index Aristotelicum* (Berlin, 1961), 837a18-52, 488b24-489a26. In the *Ethics* Aristotle uses the various cognates of *phusis* in several additional senses, for instance, to indicate "individual" natures, the methodological "natures" of the different disciplines, and even the sense of nature as a personified force of the cosmos. Grant discerns at least six different senses of the term *phusis* in the *Ethics* (*Ethics of Aristotle*, 4th ed., [London, 1885] vol. 1, pp. 483-84).

senses of nature in the *Physics*, and although Aristotle appeals to such generalizations about human nature in the *Ethics*, he keeps such observations separate from the sense of “ideal nature,” although they sometime overlap the sense of “mere nature.” Second, a survey of the use of the term *nomos* in *Ethics* shows that Aristotle unifies two senses of *nomos* which to a modern ear are distinct and perhaps even antithetical. For Aristotle, *nomos* is both morally regulative or impartial law and what is customary, and although he was aware that things which are “merely legal” are not necessarily just, what is customary takes on a normative force. Thus, in my survey of these five senses of *phusis* and *nomos* I lay the ground both for a reply to the claim that Aristotle mistakes what is usual for what is ideal and for an explanation of why *phusis* and *nomos* must be brought together since ethical habituation according to *nomos* (in both the senses of what is lawful and what is customary) is what transforms mere nature into nature as an ethical ideal.

I.A) ARISTOTLE'S USE OF “PHUSIS”

I.A.1) *Phusis* as an object of scientific inquiry

The first use of *phusis*, sometimes expressed as *phusikôs* or “in the fashion of one who is a natural philosopher (*ho phusikos*),” points to a methodological approach to understanding ethics and politics which appeals to general principles of natural science or observations based on what is usual or commonplace in human nature. Thus, in his accounts of *akrasia* and friendship, Aristotle will speak about an account or cause which is *phusikôs* or *phusikôteron*, and what he has in mind is an account that appeals to the faculty psychology of *De Anima*.¹² Concerning the nature of friendship, Aristotle considers the beliefs of *phusikoi*—his name for writers such as Heraclitus or Empedocles¹³—who explain friendship by general principles such as Strife or “the Like,” although he dismisses such accounts as foreign (*ouk oikeia*) to his inquiry.¹⁴ The *Ethics* also appeals to a central notion of the *Metaphysics*, namely, that “this is natural: that which is potential is revealed in its actuality in its function (*ergon*)” and it employs the concept of actuality (*energeia*) in the definition of the human good, the account of God, and the definition of pleasure.¹⁵

One can also find instances where Aristotle appeals to what is usual or “for the most part,” similar to the notion of *phusis* as an internal cause (*aitia*) of motion which acts for the most part in a uniform fashion, much like the account of nature found in the second book of the *Physics*.¹⁶ At times Aristotle also directs his auditor to “physiological” (*phusilogos*) investigations. For example, Aristotle appeals to such inquiries to explain how the ignorance of an intoxicated person dissipates or how bodily organs respond to intense sensations.¹⁷ Aristotle appeals to generalization about human nature which appear to be based in a sort of moral psychology or science of human

¹² EN VII.3.1147a24, IX.9.1170a13; cf. IX.9.1167b29. Cf. DA I.1.403a28, *De sensu* I.436a17, *Meta* VI.1.1026a5. Although Aristotle claims that the *politikos*—to whom the *Ethics* and *Politics* are directed—must have some knowledge of the soul, it is interesting to note that the tripartite psychology of the *Ethics* is inconsistent with Aristotle’s criticism of soul division in *De Anima* (EN I.13.1102a29-b14, III.10.1117b23-25, VI.1.1139a4-16, VII.6.1149a25-30. Cf. DA I.4: 411c30-b5, III.9: 432a22ff). See further P.A. Vander Waerdt, “Aristotle’s Criticism of Soul Division,” *American Journal of Philology* 108 (1987): 627-43 and “The Peripatetic Interpretation of Plato’s Tripartite Psychology,” *Greek, Roman and Byzantine Studies* 26 (1985): 283-302.

¹³ See *Phy* I.2.184b17, I.3.186a20, I.4.187a12, 28.

¹⁴ EN VIII.1.1155b8-9; cf. EE VII.1.1235a10, *Pol* I.5.1254a31, II.8.1267b23-29. The account of Hippodamus borders on satire.

¹⁵ EN IX.7.1168a9-10, I.7.1098a16-17, VII.12.1153a14-15; cf. I.6.1096a20-3.

¹⁶ EN II.1.1103a18-24, III.3.1112a32-4, V.8.1135b21-3; cf. EE II.8.1224a18, VII.2.1238a14, VIII.2.1247a31, *Phy* II.1.192b12-15, II.8.198b34-99a1. Cf. J. Owens, “Nature and Ethical Norm in Aristotle,” in *Aristotle The Collected Papers of Joseph Owens*, ed. A. Catan (Albany, 1981), pp. 164-68. Some have found in Aristotle’s account of *ôs epi to polu* or “for the most part” the basis for a science of ethics, but nonetheless one that is a practical rather than contemplative science. See further E. Winter, “Aristotle, *hos epi to polu* relations, and a demonstrative science of ethics,” *Phronêsis* 42 (1997): 163-89; and C.D.C. Reeve, *Practice of Reason Aristotle’s Nicomachean Ethics* (Oxford, 1992); cf. M. Nussbaum, “Rational Animals and the Explanation of Action,” *The Fragility of Goodness* (Cambridge, 1986), pp. 264-89.

¹⁷ EN VII.3.1147b8-9, VII.14.1154b8.

nature. For example, Aristotle claims that “nature appears to avoid what is painful and to aim at what is pleasant”; “all things love and choose existence (*to einai*)”; “life (*zôê*) is good by nature... it is itself good and pleasant (as appears likely from the fact that all men desire it)”; and “natural” desires are those common to all humans, e.g., that for food.¹⁸

Is nature, as understood by the *phusikos*, relevant to practical philosophy? The question is important because scholars such as Julia Annas have claimed that sometimes Aristotle confuses nature in the sense of what is usual with nature in the sense of an ethical ideal.¹⁹ Although the *Ethics* shares the conceptual resources of Aristotle’s scientific works and appeals to generalizations about human nature, it is fundamentally wrong to view the *Ethics* as based in Aristotle’s natural science or to mistake what is usual for what is ideal. As noted above, Aristotle himself distinguishes his inquiries from those of the *phusikoi*, and generally rejects them as irrelevant to the question at hand. Both within the *Ethics* and elsewhere in his writings Aristotle distinguishes the practical science of ethics, which is concerned with action or doing, from the contemplative sciences of metaphysics and physics, which are concerned with knowledge for its own sake.²⁰ Although at times Aristotle’s ethical inquiries encroach upon those in the contemplative works, for instance, in his critique of the Platonic notion of the Good, even there Aristotle dismisses such a metaphysical investigation “to some other branch of philosophy in which it is more at home” (I.6.1096b30-2). Further, it is also possible for contemplative and practical sciences to provide different analyses of the same phenomenon. Aristotle’s account of soul division in the *Ethics* is different from the one in his *De Anima*, and he sees no problem with their inconsistencies.²¹

Aristotle’s generalizations about human nature provide a canvas, as it were, on which practical philosophy depicts a human ideal, but at least in the *Ethics* Aristotle does not confuse what is usual for what is ideal. Aristotle acknowledges certain generalizations about human motivations and desires, but they do not determine what is right and wrong. For instance, human nature is more inclined to some excesses or deficiencies rather than others, but that simply means on a practical level we must be on guard against some departures from the mean rather than others.²² There are limits to what human nature can endure, but that does not change the notion of what is voluntary; rather, it concerns what is excusable or not blameworthy.²³ Although human nature is not sufficient to pursue contemplation without interruption since we need bodily health and food, that should serve as no impediment to seeking immortality through the mind.²⁴ Thus, although it would be wrong to say that ethical philosophy is conceptually independent from the other Aristotelian sciences, including a sort of ethical anthropology, nonetheless it differs from the natural sciences in its aims and methods. The object of investigation—what the *Ethics* calls *hê peri ta anthrôpina philosophia* (X.9.1181b15-16)—may be the same, but the orientation of the contemplative and practical sciences are fundamentally different.

I.A.2) *Phusis* in the sense of “mere nature”

¹⁸ *EN* VIII.4.1157b16-17, IX.7.1168a6-7, IX.9.1170b1-2, 1170a26-8, III.11.1118b8-11; cf. *Pol* III.6.1278b25-30, *EE* I.5.1216a11-14.

¹⁹ Annas, “Arguments from Nature,” pp. 192-94.

²⁰ *Meta* V.1.1025b19-29, I.2.982b11-28, *EN* II.2.1103b26-9, III.3.112a21-b12, VI.7.1141b2-23, X.9.1179a33-b4; cf. *EE* I.5.1216b11-19. See further, J. Frank “Citizens, Slaves, and Foreigners: Aristotle on Human Nature,” *American Political Science Review* 98 (2004): 91-104.

²¹ Indeed, in *De Anima*, Aristotle claims that the natural philosopher and the dialectician can give alternative and non-contradictory accounts of anger: the former defines anger as “the surging of blood and heat around the heart” (identifying material aspects of the phenomenon) and the later defines it as “desire for retaliation” (identifying its form or *eidos*). *DA* I.1.403a29-b3; cf. *EN* VII.6.1149a25-33. See further P. Aubenque, “La définition aristotélicienne de la colère,” *Revue Philosophique* 147 (1957): 300-17.

²² *EN* II.8: 1109a12-18, II.9: 1109b2-10; cf. III.11.1119a6-8, III.12.1119a22-34.

²³ *EN* III.1.1110a23-29, 1110b9-17. Aristotle notes that “natural desires” (*phusikai orexeis*) are “more pardonable,” and congenital bodily defects are not blameworthy (*EN* VII.6.1149b4, III.5.1114a22-30, V.8.1136a5-9, VII.5.1148b31-4).

²⁴ *EN* X.8.1178b32-1179a1, X.7.1177b34-35; cf. VI.7.1141a33-41b2, VII.14.1154b22-32.

The second relevant sense in which Aristotle uses the notion of nature in the *Ethics* indicates the notion of what Annas has called “mere nature,” namely the incomplete “temperament” of a young man still capable of development.²⁵ In this sense of the term, Aristotle famously notes that ethical virtue is not by nature since it requires habituation and that virtue cannot be a *dunamis* or capacity, since we are not called “good” or “bad” according to things we receive from nature.²⁶ Although Aristotle notes that intellectual virtues such as *noûs*, *gnomê* and *sunesis* are thought to be by nature, no one is a *sophos* by nature.²⁷ Aristotle’s clearest illustration of “mere nature” arises in his juxtaposition of natural virtue (*phusikê aretê*) and complete or “sovereign” virtue (*kuria aretê*). Natural virtue is like the spirited courage or ferocity of a cornered animal motivated by pain: it appears to be courage, but since it lacks choice (*proairesis*) and is not according to what is noble (*dia to kalon*), it is only an approximation of complete courage or sovereign virtue.²⁸ To use another example, natural virtue is like cleverness (*deinotês*): it is an ability to pick the most efficient means to an end but it does not speak to the goodness or badness of that end.²⁹ Although such natural characteristics may be congenital, they also include those characteristics which arise at a certain age of life. Height and complexion are characteristics of “mere nature,” but so too is the process of aging, the graying of hair, or the attainment of judgment or understanding.³⁰ In sum, although characteristics which humans possess in the sense of “mere nature” are not without value, people are not blamed or praised for such qualities, and such qualities do not necessarily result in virtuous actions.³¹

I.A.3) *Phusis* in the sense of “ideal nature”

The third and final sense in which Aristotle uses *phusis* in the *Ethics* indicates the good functioning or end of a human being.³² Thus, when Aristotle claims that man is a “political animal” or a “household animal” by nature, he indicates the conditions necessary for the good functioning of an individual, viz., that he or she live in a community with family, friends, and fellow citizens, but he also indicates that we have impulses which make us amenable to such conditions.³³ For instance, the coupling instinct or urge—which according to the *Politics* is not done “from choice” (*ouk ek proaireseôs* [1252a28]) but rather is by nature—leads men and women into a procreative union of husband and wife and thus makes the household “natural” in the sense of “mere nature”; but unlike other animals, humans couple not only to continue the species, but also because of utility, pleasure, and even, in some cases, to seek a virtuous other who can serve as a second self.³⁴ “Natural” does not mean “usual” or commonplace, but rather, it means “normal” in the sense that it indicates the norm or end which only rare examples will actually

²⁵ Aristotle invokes such a notion by the use of the adjective *phusikos*, the use of *phusis* in the dative or genitive, and the impersonal use of *phuô* in the perfect, all of which can indicate that something is “by nature.”

²⁶ *EN* II.1.1103a19, II.5.1106a9. Natural virtue is almost identical with “bodily virtue” (*EN* I.12.1101b17-18, X.8.1178a14-16, *EE* III.7.1234a23, *MM* I.34.1197b36-98a22).

²⁷ *EN* VI.11.1143b6-8; cf. I.3.1095a3-4, VI.8.1142a13-21.

²⁸ *EN* III.8.1116b23-27, 31-33, 1117a4-9, VII.13.1153b28-30; cf. *EE* III.1.1229a28.

²⁹ *EN* VI.13.1144b3 ff.; see also V.1.1129a11-23, VIII.13.1162b35.

³⁰ *EN* V.11.1143b8-10, V.8.1135a34-b3; cf. *EE* I.1.1214a16-18. *EE* defines the natural (*to phusei*) as “what accompanies everybody as soon as he is born or else what comes to us if development is allowed to go on regularly, for example, gray hair and old age” (II.8.1224b33-5).

³¹ In *EN* III.5 (1114b7 ff.) Aristotle considers the possibility that someone could be born with a sort of “moral vision” which made him good by nature (*euphês*). He rejects such a scenario because it implies that virtue and vice are involuntary (1114b13-14). Cf. *EE* VIII.2.1247a2 ff.

³² In his account of the human good in *EN* I.7, Aristotle asks whether there is a human function (*ergon*) or if humans instead are “by nature functionless” (*all’ argon pephuken* [1097b29-30]). As Annas points out, oddly enough the rest of Aristotle’s discussion in *EN* I.7 makes no explicit use of the notion of “ideal nature” (Annas, *Morality of Happiness*, p. 144).

³³ *EN* I.7.1097b11, VIII.12.1162a17, IX.9.1169b18; *EE* VII.10.1242a24; *Pol* I.2.1253a3-4, 8-9, III.6.1278b20. For the multiple senses in which Aristotle uses the term “political animal,” see D.J. Depew, “Humans and Other Political Animals in Aristotle’s *History of Animals*,” *Phronêsis* 40 (1995): 156-81.

³⁴ *Pol* I.1.1252a28; *EN* VIII.12.1162a16-27.

reach.³⁵ Thus, there are “mere nature” impulses of love within the household between parent and offspring or husband and wife, but it does not follow that most or many families exhibit such bonds or that such bonds will develop into healthy family relations independent of societal norms.³⁶ When Aristotle claims that the *polis* exists by nature he is not making a sociological generalization about the universality of *poleis* in the world, but rather, he is asserting that the *polis* is a specific kind of community in which an individual can achieve human perfection.³⁷

Nature, in this third sense which indicates good human functioning, is also closely related to Aristotle’s doctrine of pleasure. Aristotle defines pleasure as the unimpeded activity or end (*telos*) of a state according to its nature (*energeia tês kata phusin hexeôs*).³⁸ Again, just because pleasure is in a sense “according to nature” or a “natural state” it does not follow that it is in any way universal, and Aristotle explicitly notes that although all people pursue pleasure, they hardly pursue the same pleasure and few pursue the best pleasures.³⁹ Rather, the excellent man (*ho spoudaios*) sees what is true in the case of the noble and the pleasant, and is, as it were, “the standard and measure” (*kanôn kai metron*) of such things.⁴⁰ Things which are “pleasant by nature” are things which “are pleasant to lovers of what is noble”; more generally, unqualified goods (*hâplôs tagatha*), are truly good only to one who is able to take pleasure in their essentially or naturally pleasant qualities.⁴¹ For instance, although Aristotle claims that children are a natural source of delight and joy to a parent, it is possible to love a child to excess or unhealthily.⁴² Rather, things which are good or pleasant “by nature” need to be desired in the proper fashion, and so Aristotle claims that since the good man, insofar as he is good, is the measure of each thing, then “what appears pleasures to him will also really be pleasures, and what is pleasant will be what he enjoys.”⁴³

The virtuous man feels pleasure because virtue itself has a “nature,” albeit one which is rare and the result of inculcation. Aristotle’s discussion of virtue illustrates a slightly different sense of “ideal nature,” namely the sense in which certain things have “essences” or characteristics according to which something is known “in itself” (*kath hauto*) rather than accidentally (*kata sumbebêkos*).⁴⁴ The “nature” of ethical virtue is closely related to the doctrine of the mean since ethical virtues are “natural constituted (*pephuken*) to be destroyed by excess and deficiency,” and it is virtue which preserves ethical principles.⁴⁵ The nature of virtue cannot be “mere nature,” because it is not the

³⁵ Annas claims that Aristotle confuses this point in his account of slavery in *Politics* I, but as I have shown in my account of the natural scientific sense of *phusis*, he usually keeps what is natural and what is usual in the *Ethics* distinct (“Ethical Arguments from Nature,” pp. 192-194).

³⁶ See *EN* VIII.1.1155a17-20, VIII.12.1161b16-34, VIII.11.1161a18, VIII.12.1162a17, X.9.1180b7. Indeed, Aristotle explicitly denies that non-Greek families possess such “natural bonds” and even Greek families in Aristotle’s best regime will need the guidance of extensive legislation to function “naturally” (*Pol* I.2.1252b5-9, *EN* VIII.10.1160b28-33). For the breakdown of such family bonds, see *EN* VIII.10.1160b28-1161a9, VIII.14.1163b23-25. See further my “Justice in Aristotle’s Household and City.” *Polis* 20 (2003) 1-21.

³⁷ *Pol* I.2.1252b31-53a3; cf. Annas, “Ethical Arguments from Nature,” pp. 191-92.

³⁸ *EN* VII.12.1153a12-16, VII.14.1154b16-18; cf. VII.11.1152b13, VII.12.1152b33-53a2, X.3.1173b9-11.

³⁹ *EN* VII.13.1153b28-30; cf. X.2.1172b9-18.

⁴⁰ *EN* III.4.1113a29-b2. See further P. Gottlieb, “Aristotle and Protagoras: The Good Human Being as the Measure of the Goods,” *Apeiron* 24 (1991): 25-46.

⁴¹ *EN* I.8.1099a7-15; *EN* VII.4.1148a24-36; cf. *EN* V.1.1129b4, V.9.1137a26-31, VII.12.1152b25-8, IX.9.1169b21-3, 1170a2-3; cf. *EE* VII.5.1239b38, *DA* III.10.433b7-10.

⁴² *EN* VII.4.1148a28-30, VII.5.1148b15-18. Aristotle also believes that there are “unnatural” bestial pleasures which can result from disease, habits, or morbidity (VII.5.1148b17-20, VII.6.1149b28-30).

⁴³ *EN* X.5.1176a17-19; cf. *Pol* VII.13.1332a23-25.

⁴⁴ *EN* VII.14.1154b16-18, IX.9.1170a26-8 with 1170b1-2; cf. *EN* I.13.1102b13, VI.1.1139a10-12, *EE* VIII.3.1248b27-40, 1249a25, *Pol* II.2.1161a26, IV.11.1296b25.

⁴⁵ *EN* II.2.1104a11-18, II.3.1104b20-21, II.6.1106a25-6, VII.8.1151a15-20; cf. *EE* I.5.1216a39; see also *EN* V.5.1134114-16, V.10.1137b26-27.

result of natural development, but rather, it appears almost like a “second nature.”⁴⁶ Indeed, at one point, when considering the possibility of rehabilitating the *akratês* or unrestrained man, Aristotle comes close to describing virtue as a second nature, although oddly enough he does so in the words of the Sophist Eueneus. Aristotle claims that those who are unrestrained as the result of habit (*ethos*) are more easily cured than those who are so by nature (*phusei*), since habit is more easily cured than nature; “but the reason why habit is also difficult to change is that it is like nature (*têi phusei eoiken*), for as Eueneus says, ‘Habit, I say, is long time training (*meletê*), my friend, and in the end training is nature (*phusis*) for human beings.’⁴⁷ Mere nature and ideal nature appear to be on a continuum, and to understand their relationship we need to examine Aristotle’s notion of *nomos* which allows one to move from the former to the latter.

I.B) ARISTOTLE’S USE OF “NOMOS”

I.B.1) *Nomos* in the sense of “impartial law”

Aristotle uses the term *nomos* in two frustratingly similar, interrelated, but distinct sense.⁴⁸ First, Aristotle means by *nomos* what we mean by “law,” viz. a general (perhaps even universal) norm promulgated by a *nomothetês* or law-giver, and one which in many respects appears to be impartial and regulative.⁴⁹ Thus, Aristotle famously claimed that “the law is reason without desire” (*aneu orexeôs nous ho nomos estin*) and one of the reasons why he ultimately champions the rule of law over the rule of men is because many men are bad judges when their own interests are at play.⁵⁰ Throughout the *Politics* “rule of law” indicates the characteristic of a regime in which the laws rather than men are sovereign.⁵¹ Aristotle is aware that laws are general rules and the problem of equity (*epieikeia*) arises because laws do not speak to specific cases, but rather, as universal statements, they must be applied to particular instances.⁵² At one point, Aristotle claims that a slave is human insofar as he or she can share in law or contract (*sunthêkê*).⁵³ Finally, Aristotle uses an adjective derived from *nomos*, viz. *to nomimon* or the “lawful,” to indicate that which aims at the common good. Thus, in his analysis of justice as “complete virtue” or the unity of virtue in relationship to others, Aristotle claims that “the just is the lawful (*to nomimon*)”; that “all lawful things (*ta nomima*) are somehow (*pôs*) just”; and that “nearly all lawful actions (*ta polla tôn nomimôn*) are those produced by the whole of virtue, for the law (*nomos*) orders living according to each virtue, and prohibits living

⁴⁶ See further M. Burnyeat, “Aristotle on Learning to be Good,” in A.O. Rorty, ed., *Essays on Aristotle’s Ethics* (Berkeley, 1980), pp. 69-92. J. McDowell has developed this notion further within a neoAristotelian framework: see, for instance, his “Two Sorts of Naturalism,” in *Mind, Value, and Reality* (Cambridge, 1998), pp. 167-97.

⁴⁷ *EN* VII.1.1152a27-33; cf. *MM*.II.6.1203b31-2, *Rhet* I.11.1370a6-7, *Prob.* 879b36-880a5, 949a28-9. In *De memoria*, Aristotle writes that “*ôsper gar phusis êdê to ethos*” (II.452a27-8), but that appears to be the closest that Aristotle comes to claiming that habit is a “second nature.” See further, P.M. Morel, “L’habitude: une seconde nature?” in *Aristotle et la notion de nature*, ed. P.M. Morel (Bordeaux, 1997), pp. 131-48.

⁴⁸ R. Kraut notes that “we should realize that the Greek term that is translated as ‘law’—*nomos*—covers not only the enactments of a lawgiver or a legislature, but also the customs, norms, and unwritten rules of a community. The noun *nomos* is cognate to the verb *nemein*, one of whose senses is ‘to believe’. Whatever conduct a community believes to be fitting—its proper and customary way of doing things—constitutes the *nomoi* of that community” (*Aristotle Political Philosophy* [New York, 2002], p. 105).

⁴⁹ For the most extended discussion of *nomos* in Aristotle’s thought, see D. Weirnick, “Law in Aristotle’s Ethical-Political Thought,” unpublished Ph.D. dissertation, Rice University, 1998.

⁵⁰ *Pol* III.16.1287a33; cf. III.9.1280a15-17, III.15.1286a16-20, 34, III.16.1287b4-5; *EN* X.1180a22-23.

⁵¹ See *Pol* IV.4.1292a3-32, IV.5.1292b5-7, 11-22, IV.6.1292b27 ff., IV.8.1294a1-10, IV.10.1295a15-17, IV.12.1296b35-40.

⁵² *EN* V.7.113515-8, V.10.1137b13-34, *Pol* II.8.1269a9-14, III.15.1286a8-10; cf. *to psêphisma*, *EN* V.7.1134a23, V.10.1137b27-8, *Pol* IV.4.1292a4-7.

⁵³ *EN* VIII.11.1161b5-8; cf. *Pol* I.5.1254b23-4, I.13.1259a28-9, 1260a11-14. See further my “Is Natural Slavery Beneficial?” *Journal of the History of Philosophy*, forthcoming.

according to each evil.”⁵⁴ Clearly, Aristotle here is using the term *nomos* and its cognate *to nomimon* in these passages to indicate a regulative universal norm.⁵⁵

I.B.2) *Nomos* in the sense of “custom”

Second, Aristotle also uses the term *nomos*, and more specifically, the adjective *to nomikon*, to mean that which is “customary,” “conventional,” and that which appears to be opposed to nature.⁵⁶ Although I will examine Aristotle’s discussion of the opposition of *phusis* and *nomos* below, he cites or alludes to the opposition of “nature and convention” approximately a dozen times in his ethical and political writings. For instance, Aristotle reports that some people think that the subject matter of ethics and politics, *ta kala kai ta dikaia*, is only a matter of convention rather than by nature, and some people have claimed that slavery is wrong because it exists only by convention rather than by nature.⁵⁷ Sometimes Aristotle uses *nomos* to indicate “legality” or what is only sanctioned by law, and so is just only “accidentally.”⁵⁸ But consider the following passage from the *Ethics*:

Is it possible to do injustice (*adikein*) to oneself or not? . . . There exist some just things which are those in accord with every virtue and prescribed by the law (*hupo tou nomou*). For instance, the law (*ho nomos*) does not allow one to kill oneself, and that which it does not allow is forbidden. (*EN* V.1138a4-7)

As Stewart pointed out long ago (and has been followed most recently by Gauthier and Jolif), the notion of *nomos* here must be more than mere “law” or “convention,” for it includes universal societal norms such as the taboo against suicide.⁵⁹ Although the “conventional” (*to nomikon*) part of political justice is described as “that which in the beginning (*ex arches*) makes no difference if it is one way or the other,” Aristotle notes that once it is laid down, then of course it makes a difference and possesses normative force, presumably independent of whether it is in accord with natural right (V.7.1134b20-21). It may be purely arbitrary, *ex archês*, whether the British drive on the left or the right, but it is surely unjust and indeed dangerously irresponsible to ignore such “conventional justice” once it has been established.⁶⁰ Although Aristotle wrote that law is *noûs* without desire, he also claimed that “law has no power to force obedience (*pros to peithesthai*) save through the force of custom (*to ethos*).”⁶¹

⁵⁴ *EN* V.1.1129a34, 1129b12-14, V.2.1130b22-26; cf. V.7.1135a6, V.10.1137b12-14, X.9.1180b4. See also *Pol* II.8.1268b42-1a, V.3.1303a22, VII.2.1324b27, VII.2.1325a11. For interpretation, see Kraut, *Aristotle Political Philosophy*, pp. 111-18.

⁵⁵ Although Aristotle believes that the notion of law includes generality and impartiality, he also believes that the notion of law is posterior to the notion of regime-type or unwritten constitution (*politeia*). Thus, in the *Politics* Aristotle claims that laws should be promulgated to fit the regime-type, and “not the regime-type made to fit the laws” (*Pol.* IV.1.1289a13-14; cf. III.10.1281a35-39, III.11.1282b7-13).

⁵⁶ See *EN* V.9.1136b34, VIII.13.1162b23-5; *EE* VII.10.1242b32, a7, VII.10.1243a5, 14.

⁵⁷ *EN* I.3.1094b15-16, *Pol* I.3.1253b21; cf. *EN* V.5.1133a30, 1133b21, V.7.1134b18 ff., *MM* I.34.1194b32, *Pol* I.4.1254a13-15, I.5.1254b19-21, 1255a1, I.6.1255b13-16, III.6.1278b33, *Soph Elen* 12: 173a7-18, 29-30. Aristotle also distinguishes between justice which is “unwritten” (*agraphon*) and “according to law,” although it is unclear if this distinction maps on to that between “convention and nature” (*EN* VIII.13.1162b20-23, *EE*.VII.10.1242b33, *Rhet.* I.13). See further M. Ostwald, “Was There a Concept of *agraphos nomos* in Classical Greece?” in *Exegesis and Argument*, ed. E.N. Lee (Assen, 1973), pp. 70-104.

⁵⁸ See especially *EN* V.9.1137a10-13; cf. III.8.1116a19-20, VI.12.1144a15, VII.10.1152a21-24.

⁵⁹ J.A. Stewart, *Notes on the Nicomachean Ethics of Aristotle* (Oxford, 1892), vol. 1, p. 533; cf. Gauthier and J.Y. Jolif, *L'Éthique à Nicomaque*, 2nd ed. (Paris-Louvain: 1970), t. 2, pp. 423-24.

⁶⁰ Kraut writes “the fact that this form of justice rests to some degree on an arbitrary selection of one rule rather than another does not undermine the importance of abiding by the convention that is in force in one’s community. It would be absurd to argue that since some of the practices of one’s city are uniquely correct, but are just only by convention; one need not abide by them. Such an argument would ignore the obvious fact that there are great advantages in having a common way of interacting with each other, despite the initial arbitrariness involved in conforming to this rather than that scheme of expectations” (*Political Philosophy*, p. 128).

⁶¹ *Pol* II.8.1269a17-19; cf. III.16.1287b5-9, IV.5.1292b14-22; *EN* VI.2.1139a36.

The fact that Aristotle uses the same term to indicate two concepts which we usually oppose should alert us that not only does Aristotle understand *nomos* differently from the Sophists who opposed *nomos* to what was eternally invariable; his account places significant trust upon the extent to which longstanding community beliefs carry within themselves normative guidance. Given Aristotle's remarks about things like slavery and his intellectualist account of virtue, it is clear that Aristotle hardly endorses the status quo.⁶² But perhaps unlike some modern viewpoints, he is not inherently hostile or suspicious of customary norms.

PART II: Ethical habituation: Mere nature, *nomos*, and ideal nature

The sense of *nomos* as "custom" points to Aristotle's central way of interrelating mere nature, law, and nature as an ethical ideal, namely, through his account of ethical habituation. As noted above, nature as an "ethical ideal" provides the model of an individual who naturally takes pleasures in unqualified or "absolute" goods.⁶³ Such a person loves and hates the right things and possesses a native goodness (*eugenês*) and love of the noble (*philokalos*).⁶⁴ As Plato properly noted, according to Aristotle, right education (*orthê paideia*) consists in enjoying and being pained by the correct things from one's youth onwards, and Aristotle seems to think that such a condition arises either through nature (*phusei*), through habit (*ethei*), or through teaching (*didaxê(i)*).⁶⁵ But even a person with such a noble nature is not fully virtuous: Aristotle only claims that such a person is amenable to the exhortation (*protrepsasthai*) of virtue, but he is still only like the properly tilled soil capable of nourishing a seed.⁶⁶

How is one to prepare such rich and nutrient soil? In his dialectical treatment of ethical habituation in *EN* X.9 Aristotle first considers the claim that such preparation should take place within the *oikia* or household. But he notes that

On the one hand, paternal instruction (*patrikê prostaxis*) has not the power to prevail and compel; and neither, in general, does any one man unless he is a king or of such a sort. Law (*nomos*), on the other hand, has the power to compel, and further, it is reason (*logos*) which arises from a sort of practical wisdom and mind. (X.9.1180a19-23)

Aristotle then considers the claim that ethical habituation should take place in the realm of the city. Although he endorses the claim that "community attention" (*koinê epimeleia*) is best, at least according to the *Politics*, the only community that ever gave any public attention to its young was Sparta, and they inculcated the wrong goals.⁶⁷ Thus, for individuals who live in defective regimes, "it seems fitting for each individual to promote the virtue of his children and his friends... and from what we have said, it seems he will be better able to do so if he acquires the legislative science (*nomothetikê* [X.9.1180a34-35])." Although Aristotle endorses "private education" in the household, such a household appeals to *both* the natural bonds and affections that exist between parent and child *and* the model of legislative enactments and customs (*ta nomima kai ta ethê*) of the city.⁶⁸ Ethical habituation transforms

⁶² On the radical reforms implied by Aristotle's doctrine of slavery, see Newman, *Politics of Aristotle* (Oxford, 1887), vol. 1, pp. 151-52; On the radical reformation that Aristotle gives to traditional Greek virtues, see H. North, *Sophrosyne* (Ithaca, 1966), p. 211.

⁶³ *EN* IX.9.1170a14; cf. *EN* I.8.1099a7-15, III.4.1113a29-b2, V.1.1129b4-7, V.9.1137a26-31, VII.4.1148a23-48b5, VII.12.1152b26-28, X.5.1176a8-29; *Pol* VII.13.1332a20 ff.; *DA* III.10.433b9. See further Burnyeat, "Aristotle on Learning to be Good," pp. 69-92 and I. Vasiliou, "The Role of Good Upbringing in Aristotle's Ethics," *Philosophy and Phenomenological Research* 56 (1996): 771-97.

⁶⁴ *EN* X.9.1179b25-26, 8-9; cf. *EN* III.5.1114b6-8, VI.13.1144b34, *EE* VII.2.1237a6, VIII.2.1247a38, b22, b39.

⁶⁵ *EN* II.3.1104b12-14; on Aristotle's three means of becoming good, see *EN* X.9.1179b20-31, *Pol* VII.13.1332a30-35, 39-41, b3-8; cf. *EN* I.7.1098b2-4, I.9.1099b9-11, *EE* I.1.1214a15-28. See further J. Swanson, "Aristotle on Nature, Human Nature, and Justice," in *Action and Contemplation: Studies in the Moral and Political Thought of Aristotle*, eds. R.C. Bartlett and S.D. Collins (Albany, 1999), pp. 225-47.

⁶⁶ *EN* X.9.1179b7-11, 26-27; cf. *EN* I.4.1095b5-13.

⁶⁷ *EN* X.9.1180a29-30; X.9.1180a25-6, *Pol* II.9.1271b1-7, VII.2.1324b5-9, VII.13.1333b5 ff. It should be noted that the accuracy of Aristotle's remarks about Sparta are disputed. For a thorough review of the literature, see E. Schütrumpf, *Aristoteles Politik Buch II und Buch III* (Berlin, 1991), pp. 283-98.

⁶⁸ *EN* X.9.1180b3-7; cf. *EN* VIII.10.1160b23 ff., *Pol* I.13.1260b8-21.

“mere nature” into nature as an “ethical ideal” within the natural household but according to the model of the legislator. No doubt after the preparation of such a noble nature, there will be further extensive guidance by the *nomoi* and customs of one’s city, and Aristotle spends almost the entire last book of the *Politics* considering the nature of such *paideia*. But even within the household, an organization which arises from impulses which originate in “mere nature,” Aristotle incorporates a virtual legislator. Conceptually, one can distinguish the different senses of *phusis* and *nomos* at play in such a realm, but the successful head of household ultimately has to interweave and combine them together.

PART III: EN V.7 AND THE INTERRELATION OF PHUSIS AND NOMOS

In the first part of my paper I proved through an analysis of Aristotle’s different uses of the term *phusis* that nature in the sense of what was usual or what was undeveloped is distinct from nature in the sense of an ethical idea; further, my analysis of the senses of *nomos* proved that Aristotle blends together two senses of norms which we keep distinct, namely that which is normative and that which is customary. In the second part of my paper I proved that *phusis* and *nomos* are interrelated by explaining how *nomos*—both in the household and in the city—transforms mere nature into ethical nature. It remains to be said how *phusis* and *nomos* are interrelated.

In EN V.7 Aristotle responds to an unnamed interlocutor who argues that since that which is natural (*to phuskion*) has everywhere the same validity (*dunamis*) but that what is legal (*to nomikon*) changes from place to place, it follows that all justice is changeable (1134b24-27). Aristotle responds that

This is not so, though in a way it is so. With us, though presumably not at all with the gods, there is such as a thing as the natural, but still all is changeable (*kinêton mentoi pan*); but there is such a thing as what is by nature (*phusei*), and what is not by nature (*mê phusei*). What sort of thing, among those that admit of being otherwise, is natural, and what sort is not natural, but legal and by convention (*nomikon kai sunthêkê(i)*), if both natural and legal are changeable (*eiper amphô kinêta homoiôs*)? It is clear in other cases also,⁶⁹ and the same distinction will apply; for the right hand, for instance, is naturally superior, even though it is possible for everyone to become ambidextrous. The sorts of things that are just by convention and expediency are like measures. For measures for wine and for corn are not of equal size everywhere, but in wholesale markets they are bigger and in retail smaller.⁷⁰

The overall point of Aristotle’s response is clear: whereas the Sophistical interlocutors set up a false dichotomy between invariable nature and variable customs, Aristotle claims that both nature and convention are variable. Aristotle’s discussion in EN V.7 has been much disputed, but for the purpose of my argument I wish to focus on how it illustrates the interrelation of nature and convention.⁷¹

The opening sentence of V.7—*tou de politikou dikaïou to men phusikon esti to de nomikon* (1134b18-19)—asserts that what is natural and what is conventional or legal are parts within political justice (rather than as was the case with the Roman jurists who divided *ius naturale* and *ius positivum* within *ius*),⁷² but Aristotle’s response to

⁶⁹ Irwin follows MS Gamma, contra Bywater, and reads “...eiper amphô kinêta homoiôs. Dêlon <de> kai epi tôn allôn <kai> ho autos harmosei diorismos” (1134b32-33).

⁷⁰ EN V.7.1134b27-35a3. T. Irwin translation, slightly emended (*Aristotle Nicomachean Ethics*, 2nd ed. [Indianapolis: Hackett Publishing, 1999]). For a recent analysis of the textual problems of this passage, see G. Romeyer Dherbey, “La question du droit naturel,” in *L’excellence de la vie. Sur l’Éthique à Nicomaque et l’Éthique à Eudème d’Aristote*, eds. G. Romeyer Dherbey and G. Aubry (Paris, 2002), pp. 125-37.

⁷¹ An exhaustive account of debate about EN V.7 can be found in P. Destrée, “Aristote et la question du droit naturel (*Eth. Nic.*, V,10, 1134b18-1135a5),” *Phronêsis* 45 (2000): 220-29. I am much indebted to Destrée’s analysis.

⁷² See T. Aquinas, *Commentary on Aristotle’s Nicomachean Ethics*, trans. C. I. Litzinger (Notre Dame, 1993), §§1016-17. See also J. Roberts, “Justice and the Polis,” pp. 345-46; and F. Miller, “Aristotle and Natural Law,” pp. 287-88. Tony Burns has argued that unlike the bipartite tradition of Stoic natural law, which views positive and natural law in a “vertical” relation in which the latter is the basis or ground of the former, Aristotle incorporates the natural and conventional parts of political justice in a “horizontal” relation in which nature and convention are interwoven (“Aristotle and Natural Law,” *History of Political Thought* 19 [1998]: p. 148).

his interlocutors makes clear that both parts must be variable. Aristotle's use of examples in *EN* V.7 suggests that although the two parts of political justice can be isolated in abstraction, to view either part separately from the other or to characterize the variability of either part differently is the source of his interlocutor's misleading opposition of nature and convention. On the surface (and as his interlocutors would claim) Aristotle's examples—what sort of animal to sacrifice to a god, the amount necessary to ransom a prisoner, right-handedness, and differences in retail and wholesale measurements—appear to be one-sided instances of the nature/convention divide: right-handedness is an instance of what nature entails “for the most part,” liturgical details of worship are simply the result of convention and history. Along the lines of such an argument, the interlocutor wishes to point out that natural practices are invariable, whereas conventional practices vary from city to city, and indeed, vary historically within the same city.

But at a deeper level both such one-sided examples exhibit the interweaving of nature and convention.⁷³ As readers of Plato's *Laws* know, the universal naturalness of right-handedness is hardly a fore-gone conclusion. The Athenian stranger claims that humans are naturally ambidextrous, and only become right-handed or left-handed through habituation.⁷⁴ Further, as Pierre Aubenque has noted, the different measurements in retail and wholesale illustrate that the natural and the conventional are intertwined. Such measurements are like translations in that it is contingent in which language a translation takes place, but it is necessary that it be in a language.⁷⁵ The same is true of the other examples: as Strauss suggests, there is hardly anything merely “conventional” underlying the duties of “helping fellow citizens in misfortune into which they have fallen in consequence of performing a civic duty, and worshipping the gods by sacrifice.”⁷⁶ Aristotle's examples at first glance appear to illustrate the transitory and arbitrary character of convention, but closer examination of the ones which he furnishes point to such central facets of society as the basis of commerce, language, religious worship, and civic duty.⁷⁷ In sum, whereas Aristotle's interlocutors obscured the character of political institutions by falsely opposing nature and convention, Aristotle's characterization of nature and convention as parts of political justice makes clear how both parts are mutually dependent and equally variable.

I propose that the clearest way of interpreting the relationship of nature and convention derives from the model of hylomorphic wholes which Aristotle discusses in his *Metaphysics*. Aristotle insists that substance can be understood either as form or as matter but also as the composite of the two (*Meta* VII.17.1041b11 ff.). But such a composite is not a “heap,” rather it is a unified whole in which matter and form mutually determine one another. To provide an example from *De Anima*: a human being is a composite of soul and body, but the nature of human soul (which is the form of the body) is not such that it could be instantiated in any material body.⁷⁸ Rather, a human soul needs a body which possesses things such as eye jelly, a spinal cord, a heart and so forth. Further, not just any soul could “activate” a human body: the material component of the unity strives for form, but the form, to exist, requires the body. To use the example from the *Metaphysics*, the syllable “BA” (namely, the noise a sheep makes) is not a disjointed “heap” of its constituent elements; separately, the letters “b” and “a” could never produce the noise which

⁷³ R. Sharples finds evidence for a similar view in Alexander's *Mantissa*, which contains an article entitled “That justice is by nature (*hoti to dikaion phusei*).” See R. Sharples, “An Aristotelian Commentator on Justice,” in C. Gill, ed., *Virtue, Norms and Objectivity* (Oxford, 2005), pp. 287-88.

⁷⁴ *Laws* VII.794a5-795d5; cf. *Pol* II.12.1274b12-15. Aristotle discusses right-handedness elsewhere in his biological treatises: see *PA* III.3.665a22-6, IV.8.684a32-b1; *IA* 4.706a9 ff., 5.706b12-16, 19.714b8-14; *HA* II.1.497b31-2, II.17.507a19-24. See further Miller, “Aristotle on Natural Law and Justice,” pp. 289-92; and more generally, G.E.R. Lloyd, “Right and Left in Greek Philosophy,” *Journal of Hellenic Studies* 82 (1962): 67-90.

⁷⁵ Cf. *De Inter* 2.16a27-30, 4.16b30-35. “Plus généralement” Aubenque writes, “les règles sont arbitraires . . . n'ayant d'autre justification que les coutumes locales, mais il est nécessaire (et ‘naturel’) qu'il y ait des règles assurant chaque fois l'égalité, l'isonomie dans les rapports humains.” See “La loi chez Aristote,” *Archives de Philosophie du Droit* 25 (1980): p. 155. Cf. H. Gadamer, *Truth and Method*, 2nd ed. rev., trans. J. Weinsheimer and D. G. Marchall (New York, 1989), pp. 312-24.

⁷⁶ Strauss, “On Natural Law,” *International Encyclopedia of the Social Sciences* (New York, 1968), vol. 2, p. 83.

⁷⁷ Kraut points out that a question as serious as whether the exposure of normal infants should be prohibited is also a matter of legal justice in the *Politics* (*Pol* VII.16.1335b19-25; see *Aristotle Political Philosophy*, p. 128, fn. 33).

⁷⁸ *DA* I.1.403a3-25, I.3.407b13-27, II.1.412b1-13a10.

the syllable produces. The composite unity of the syllable is composed of two elements or parts but the unity transforms the elements. I suggest that political justice is an analogous unity of two elements or parts, namely nature and convention. Just like one can abstractly discuss the nature of the human soul or the letter “b” in isolation from a living human or the syllable “BA,” one can identify aspects of political justice which are “natural”; but there is no such thing as “natural justice” existing independent of political justice any more than there are human souls which can exist independent of bodies (at least for Aristotle).⁷⁹

Although one does not wish to collapse Aristotle’s position into that of the Sophists, it is worth noting that his engagement with them is more muted in emphasis than that of Socrates or Plato given that it was historically not at first hand and that his own ultimate position incorporated but transcended their opposition of *phusis* and *nomos*.⁸⁰ In his *Sophistical Refutations* Aristotle condemns the *nomos/phusis* antithesis as a “commonplace rule that makes men utter paradoxes,” and suggests that it is based on an antiquated understanding which claimed that all that was according to nature was true and everything according to law was the opinion of the many.⁸¹ Of the two other citations of the *nomos/phusis* antithesis outside of *EN* V.7 in the entire *Ethics*, one is primarily an etymological point about the term *nomisma* (1133a30), and the second points out, probably only an *endoxon*, that the subject matter of the study of *politikê*—*ta kala kai ta dikaia*—admit of difference and change, so that they seem to be by convention, not by nature (*ôste dokein nomô einai, phusei de mê* [1.3: 1094b16]).⁸² Simply put, Aristotle’s opposition to Sophistical thought in his ethical-political philosophy finds its *locus classicus* elsewhere than the nature/convention antithesis.⁸³

⁷⁹ My interpretation builds upon one advanced by Richard Bodéüs, who argues that Aristotle’s account of political justice is an “interpretative jurisprudence” which contains formal and material elements. The formal principle of right distinguishes correct and deviant regimes, although its requirement—that a regime aim at the common good (see *Pol* III.6.1279a17-22)—can be fulfilled in a variety of different constitutions (namely, monarchy, aristocracy, and polity). The material principle is the “hypothesis” or underlying principle of a regime (e.g., freedom in a democracy or wealth in an oligarchy [see *Pol* IV.1: 1288b28, II.9: 1271a42, VI.1: 1317a40]) on which each regime-type is based and reformed, although it is only normative for the regime-type of which it is a material principle. See further R. Bodéüs, “The Natural Foundation of Right and Aristotelian Philosophy,” in *Action and Contemplation: Studies in the Moral and Political Thought of Aristotle*, eds. R.C. Bartlett and S.D. Collins (Albany, 1999), pp. 73, 78, 82; cf. P. Aubenque, “The Twofold Natural Foundation of Justice According to Aristotle,” in *Aristotle and Moral Realism*, ed. R. Heinaman (Boulder, 1995), pp. 43-44.

⁸⁰ Guthrie writes that one must “issue a caveat against speaking of ‘Plato and Aristotle’ in one breath, as if their opposition to sophistic empiricism were equal and identical. On the subject in which the Sophists were primarily interested, Aristotle’s standpoint was in many ways closer to theirs than to Plato’s.” W.K.C. Guthrie, *The Sophists* (Cambridge, 1971), p. 53; cf. V. Johnson, “Aristotle on *Nomos*,” *Classical Journal* 33 (1938): 353.

⁸¹ *Soph Elen* 12: 173a6-19. See further B. Yack, *Problems of a Political Animal* (Berkeley, 1993), p. 144.

⁸² Aristotle’s use of the infinitive (rather than the indicative) in his result clause (*ôste dokein*) appears to weaken the force of his claim even further since it indicates only a general result rather than an actual outcome. See further Smyth, *Greek Grammar* (Cambridge, 1920), §§2257-60.

⁸³ The alleged opposition of *phusis* and *nomos* is more pronounced in the first book of the *Politics* where Aristotle examines the naturalness of the city and slavery, but although consideration of that text goes beyond the scope of my inquiry, I believe that Aristotle’s account of the city and slavery in fact support my claim about the interrelation of nature and convention, because he underscores in *Politics* I that the city and slavery (properly understood) are just both by nature and by convention. See *Pol* I.2.1252b31-53a1 with 1253a30-36; *Pol* I.4.1254a14 with I.6.1255a3 ff., I.7.1255b36-38, and I.8.1256b23-28. See further D. Dobbs, “Natural Right and Aristotle’s Defense of Slavery,” *Journal of Politics* 56 (1994): 69-94. Although it would be the object of another study to locate the precise issue upon which Aristotle distinguishes his position from that of the Sophists, within the *Ethics* his objection seems to be against the lack of seriousness with which they address the problems of education and reform: see *EN* II.4: 1105b6-18, V.8: 1137a4-26 and X.9 *in toto* (which has traditionally been understood as a reply to Isocrates’ *Antidosis*); cf. Aristotle’s apparent response to Thrasymachus, *EN* V.1:1130a3-5, V.6: 1134b4-6. See further F. Heinemann, *Nomos und Physis, Herkunft und Bedeutung einer Antithese im griechischen Denken des 5. Jahrhunderts* (Basel, 1965) and G.B. Kerferd, *The Sophistic Movement* (Cambridge, 1981), pp. 111-130.

CONCLUSION: THE LIMITS OF NATURE AS A NORM

Rather than ascribe to Aristotle a doctrine of ethical or political naturalism, I believe that Aristotle combines *phusis* and *nomos* much in the same way that in his contemplative works his doctrine of hylomorphism combines form and matter. In part I of this paper I examined the various components of this combination throughout Aristotle's *Ethics*, and in part II I illustrated how such a combination takes place in the case of ethical habituation: a father makes use of both the natural bonds which he has with his children and the legislative science to transform the "mere nature" of a youth to the "ideal nature" or *philokalos* ready to enter into the larger world of the *polis*. The relationship between *phusis* and *nomos* is mutually dependent: as the household *nomothetês*, a father has to use a different regimen for each of his children according to their "innate" temperaments, but the molding of temperaments is also guided by the regime in which one lives.⁸⁴ Finally, in part III of the paper, on the basis of Aristotle's claim that the conventional and the natural are variable parts of political justice, I have argued that the best model for the relation of these parts is derived from the organic hylomorphism of Aristotle's treatment of substance.

What then is one to make of the relationship between normativity and nature in Aristotle's *Ethics*? I believe that although Aristotle thought nature gave hints about what is right and what is wrong, ultimately those hints are underdetermined in isolation from custom and social norms.⁸⁵ Nonetheless, Aristotle at times appears to base normativity on nature because nature provides guidance about what is wrong without specifying in turn what is right. For instance, Aristotle's account of the mean relative to us is indeterminate with respect to the right course of action since the mean will differ from individual to individual and from context to context. Nonetheless, there are certain emotions and actions—pleasure in another's misfortune, shamelessness and envy or adultery, theft, and murder—which do not admit of excess and deficiency but are always wrong.⁸⁶ The case of regime-types is similar. Although Aristotle claims that all deviant regimes are contrary to nature, it does not follow that nature indicates what is the best regime.⁸⁷ Just because one may know that a tyranny like Nazi Germany is intrinsically wrong because of the very nature of government, it does not follow that there is an equally obvious "opposite" of Nazi Germany that is intrinsically right. Just because it is contrary to nature, and so not noble or fine, for those who are equal to have an unequal share in government, it does not follow that nature unambiguously delineates who in fact is equal and unequal (cf. *Pol* VII.3.1325b9-10).⁸⁸ Isolated from *nomos*, *phusis* is indeterminate and only capable of issuing prohibitions.⁸⁹

⁸⁴ *EN* X.9.1180b6-13, *Pol* I.13.1260b8-21.

⁸⁵ Perhaps the clearest expression of the problem arises in the account of the natural slave. Aristotle writes: "The intention of nature is to make the bodies also of freemen and slaves different—the latter strong for necessary service, the former erect and unserviceable for such occupations, but serviceable for a life of citizenship . . . though as a matter of fact the very opposite comes about—slaves have the bodies of freemen and free men the souls only If this is true in the case of the body, there is even more just reason for this rule being laid down in the case of the soul, but beauty of soul is not so easy to see as beauty of body" (*Pol* I.5.1254b27-55a1; cf. Plato, *Symp* 210b).

⁸⁶ *EN* II.6.1106a31-b8, 1107a9-18. I am grateful to Richard Cobb-Stevens for suggesting this point to me.

⁸⁷ *Pol* III.17.1287b39-41. At *EN* V.7.1135a5 Aristotle claims that there is one regime which is everywhere best by nature, but he never indicates what that regime is, and it is questionable whether or not it corresponds with the city of one's prayers discussed in the last two books of the *Politics*. But it is beyond the scope of this paper to investigate the problems involved with the assertion at 1135a5. See further my "The Best Regime of Aristotle's *Ethics*" (unpublished).

⁸⁸ Cf. W. Newman, *The Politics of Aristotle*, vol. 1, pp. 19-21.

⁸⁹ I am grateful to J.J. Mulhern for commenting on an earlier draft of this paper.