

BOOK REVIEW FORTHCOMING IN *METASCIENCE*

George Duke, *Aristotle and Law. The Politics of Nomos*. Cambridge: Cambridge University Press, 2020. Pp. 181. ISBN 978-1-107-15703-03.

“The law is reason free from passion.” Thus spoke Harvard Law School Professor Stromwell (played by Holland Taylor) in the 2001 film *Legally Blonde* (starring Reese Witherspoon), quoting Aristotle in his *Politics* ([*Pol*] 3.16.1287a33). Although a single shout-out to Aristotle in a popular film does not prove a resurgence of neo-Aristotelian jurisprudence in the academy, it does illustrate the pitfalls we face in a culture that traffics in meme quotations risibly attributed to great minds (my cringe-worthy favorite is “Be kind, for everyone you meet is fighting a hard battle,” said Socrates [never]). Thus, George Duke is to be commended for showing why although there is a sense in which Aristotle believes that law is reason free from passion (Duke argues that Aristotle’s seemingly dispersed statements on law and legislation are unified by a commitment to law’s status as an achievement of practical reason), things are more complicated than that. His book provides a systematic exposition of the significance and coherence of Aristotle’s account of law and indicates the relevance of this account to contemporary legal theory.

Things are more complicated than Prof. Stromwell’s law school lecture for at least two reasons. First, Aristotle uses the term “law” (νόμος): in a wide array of contexts and with multiple meanings. Thus we have written law, but also unwritten law; law as an expression of reason, but law as what is “customary” (which 5th C. intellectuals liked to oppose to “nature”); within political justice, both a “legal” component (τὸ νομικόν) but also a “natural” component; and although Aristotle does not have an account of the law of nature per se, he will discuss things being lawful

“by nature” or “by convention.” A second complication is that Aristotle rather clearly holds that “law” is subordinate to or derivative from his notion of πολιτεία, a term that is variously translated as “constitution,” regime, or structure of government. Aristotle writes that politics (his name for political science or statesmanship) should examine “which laws are best and which are appropriate for each of the constitutions. For laws should be established, and all do establish them, to suit the constitution and not the constitution to suit the laws” (*Pol* 4.1.1289a13-15). Rather clearly, “law” here is not some universal quasi-Kantian norm but rather legislation within the framework of different political ideologies (in the way that one might say that a democratic law of universal suffrage is at odds with an autocratic political organization). Whenever one encounters the word “law” in Aristotle’s writings, one struggles to determine precisely which sense he has in mind and how it relates to our own notion of laws.

Duke’s book is designed to facilitate just such encounters. The book is organized around seven different textual problems or frameworks in which Aristotle discusses and tries to clarify different notions of law. The first chapter examines law in its most general sense, what Duke calls “law as rational constraint” (familiar to us from my opening reference to Prof. Stromwell), a discussion primarily of *Nicomachean Ethics* 10.9, in which Aristotle discusses the transition from his ethical treatise to his political treatise (which together form a diptych that Aristotle calls “the philosophy of human things” [*EN* 10.9.1181b15-16]). The second chapter explores Aristotle’s complicated claim, in *Politics* 1.2, that in some sense political communities are natural, and that in some sense they are founded by legislators or “founders.” A third chapter, ranging over the textual material in *Politics* books 3-4, examines the complication I mention above, namely the sense in which law is relative to constitution in Aristotle. A fourth chapter examines the claim, in

Politics book 3, that constitutions are just insofar as their laws and political organization aim at the common advantage or good. Chapter 5 examines how law obligates or binds the persons over whom it is promulgated (an issue at the heart of Aristotle's discussion of political instability and constitutional change in *Politics* book 5). Chapters 6 and 7 return to Aristotle's discussion of justice in the *Nicomachean Ethics* to examine two very difficult questions discussed therein, namely the relationship between law and what one might call "natural justice" and the relationship between law and equity, or more precisely, the problem of applying general laws to particular cases.

Much of Duke's book is exegetical, namely it seeks to interpret complicated arguments and discussions within Aristotle's *Nicomachean Ethics* and *Politics*. But what is especially distinctive in Duke's approach is the philosophical—or more specifically, jurisprudential—expertise that he brings to these texts. Duke has scholarly expertise in both the study of ancient philosophical texts and contemporary jurisprudence and law (he holds both a Ph.D. and a J.D.); further, he has published extensively not only on Aristotle, but also on issues of legal theory, natural law, and contemporary jurisprudence. Although Duke's primary aim is to interpret Aristotle, contemporary legal theorists will find able discussions of both contemporary legal philosophers such as John Finnis, Joseph Raz, and Ronald Dworkin, but also Thomas Aquinas. The chapters on the common good and natural justice are especially interested in connecting historical texts with contemporary secular natural law theorists.

Since Duke's individual chapters deal with individual exegetical problems, I suspect that much of the scholarly scrutiny of the book will need to turn to a careful examination of how Duke treats specific passages—which is a level of detail and critique that goes beyond the space

available for my review. I see many places where Aristotle scholars will find robust and well-supported exegetical claims in Duke's book that will spark debate, dialogue, and disagreement. But more generally, Duke's book provides a vision of Aristotle's ethical and political philosophy that is embedded in the natural law tradition, which is an alternative to the main forms that contemporary neo-Aristotelian social and political philosophy has taken. For instance, whereas Martha Nussbaum's capabilities approach envisioned a quasi-Aristotelian eudaimonistic foundation for universal human rights, Fred Miller, envisioned a quasi-Aristotelian articulation of natural rights that avoided the pitfalls of egoistic or atomistic visions of the human person alienated from political community. Within this framework, I believe Duke brings to bear a third vision for contemporary Aristotelian social philosophy that is more akin with Thomistic natural law (minus its specific religious commitments) that is embedded in claims about human goods that reason can recognize and pursue. Of course, asking whether Aristotle would agree with subsequent philosophical positions—whether Nussbaum's social democratic philosophy, Miller's libertarian natural rights, or Thomistic natural law—unavoidably confronts the challenge of anachronism. Nonetheless, political texts rarely exist in a hermeneutical vacuum in which the exegete examines them outside of historical context. Indeed, already in the 4th C. BCE, at the time that Aristotle was philosophizing, the polis-world of classical Athens and Sparta was already undergoing massive change (as Aristotle himself shows recognition of in his remarks on the collapse of Spartan hegemony in the 370s BCE). I believe scholars should welcome to the table of Aristotle interpretation a secularized natural law framework for interpreting his ethical and political works. Duke should be commended for challenging Aristotle scholars to think beyond the interpretive frameworks of the last three decades.

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