



ARTICLES



***ANEU OREXEŌS NOUS:* VIRTUE, AFFECTIVITY, AND ARISTOTELIAN RULE OF LAW**

Gregory B. Sadler

One of Aristotle's most famous and oft-quoted sayings is that "law is intellect without desire"¹ (*aneu orexeōs nous ho nomos estin*, 1287a33), occasionally rendered as "law is reason without passion," a mistranslation widespread enough to appear persistently in recent popular culture references.² This rendering remains nevertheless relatively faithful to Aristotle's thought given his earlier discussion, in which he notes: "that which entirely lacks or is not entangled with the emotional part (*to pathētikon*) [of the human being] is superior. This part is not present in the law, but every human soul of necessity possesses it" (1286a18–20). Taken in isolation, such passages suggest a picture of the law, and particularly of the "rule of law", as reason existing and operating in a manner superior to that of the embodied reason of human subjects, i.e. of rational animals. Is this a genuinely Aristotelian position? By itself, that would be a valuable question to ask and

¹*Nous* is typically translated into English as "intellect", or as the somewhat less distinct "mind". The term is also used in *N.E.* Book 6 to denote a virtue or perfection of that faculty of the human soul, often translated as "intuition", i.e. "intuition" or "intellectual grasp" of first principles. That sense of the polysemous term, however, is clearly not at work in the passages this paper focuses on. *Orexis* is typically though not always felicitously translated as "desire", a convention I will follow temporarily in this paper, before switching to the terms "affectivity" and "affective desire", whose appropriateness I will make a case for later in this paper.

²In probably the most famous and familiar case, the trope "law is reason free of passion" appeared in the 2001 movie *Legally Blonde*, quoted at the start of the movie by a Harvard Law professor in her class, then later by the heroine who rejects Aristotle's dictum and argues, as vacuously as is typical of such scenes, that "passion is a key ingredient to the study and practice of law—and of life."

answer, but one yet more worthy of guiding inquiry is this: If the Aristotelian position differs from such a simplistic picture, what more adequate position can be legitimately reconstructed as an Aristotelian one on rule of law, reason, and passion? This paper attempts to answer both of these questions by interpretative exegesis of Aristotle's texts.

I.

Aristotle's account of law, diffused not only throughout his *Politics*, but also in passages located within the *Nicomachean Ethics* and the *Rhetoric*, is complex, dialectically developed, and perhaps even at some points marked by ambiguity or seeming contradiction. Still it seems relatively clear that one feature central to Aristotle's account is the notion and the desirability of "rule of law",³ a continuously resurfacing ideal, originating in ancient political discourse, then refined and reshaped in varied ways by medieval, modern, and late modern thinkers. In light of this history, Aristotle's own concept of "rule of law" is fairly underdetermined, and because of the differing interpretations accorded the notion by the theorists who articulate it or appeal to it, this notion possessing such widespread intellectual currency is less simple, straightforward, unambiguous, and uncontested than one might first assume.⁴ Still, several ideal and identifiable features of the

³ Particularly useful or interesting discussions of Aristotle's conception of or reference to "rule of law", from which I have greatly benefitted, can be found in K. von Fritz and E. Kapp, "The Development of Aristotle's Political Philosophy and the Concept of Nature", in *Articles on Aristotle*, eds. Jonathan Barnes, Malcolm Schofield and Richard Sorabji (New York: Saint Martin's Press, 1972), vol. 2: 113–134; Barry S. Straus, "On Aristotle's Critique of Athenian Democracy", in *Essays on the Foundations of Aristotelian Political Science*, ed. Carnes Lord and David K. O'Connor (Berkeley: University of California Press, 1991), 212–233; Bernard Yack, *The Problems of a Political Animal* (Berkeley: University of California Press, 1993), particularly ch. 6, 175–208; Jill Frank, "Aristotle on Constitutionalism and the Rule of Law", *Theoretical Inquiries in Law* 8, n.1 (2007): 37–50 and *A Democracy of Distinction: Aristotle and the Work of Politics* (Chicago: University of Chicago Press, 2005); and, Clifford Angell Bates, *Aristotle's "Best Regime": Kingship, Democracy, and the Rule of Law* (Baton Rouge: Louisiana State University Press, 2003).

⁴ For representative works conceptualizing modern notions of "rule of law", discussing the concept's history, or comparing ancient and modern conceptions, cf. Judith Shklar, "Political Theory and the Rule of Law", in *The Rule of Law: Ideal or Ideology*, eds. Allan C. Hutchinson, Patrick Monahan (Toronto: Carswell Publishing, 1987); Michael Oakshott, "The Rule of Law", in *On History: And Other Essays* (Indianapolis, IN: Liberty Fund, 1999), 129–170; Jonathan Rose, "The Rule of Law in the Western World: An Overview", *Journal of Social Philosophy* 34, n. 4 (2004): 457–470; David Kairys, "Searching for the Rule of Law", *Suffolk University Law Review* 36 (2003): 307–329; James W. Torke, "What is This Thing Called the Rule of Law?", *Indiana Law Review* 34, n. 4 (2001): 1445–1456; Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004); Michael Rosenfeld, "The Rule of Law and the Legitimacy of Constitutional Democracy", *Southern California Law Review* 74 (2000): 1307–1309; and the essays contained in *The Rule of Law: Nomos XXXVI*, ed. Ian Shapiro (New York: NYU Press, 1995).

“rule of law” are more or less common across differing interpretations of the notion, and these seem also to be unproblematic components of Aristotle’s account of law. One of the most basic is the opposition between the rule of law and the rule of human beings (or a human being), a distinction Aristotle draws at numerous points.

Under the rule of law, there exist o relatively fixed standards, norms, and structures of expectations which members of a society can rely upon,⁵ whereas rule by human beings seems to involve unpredictability, arbitrariness, or capriciousness, a subjection of the other members of the society, even the direction and policies of the society, to the interests, desires, emotions, or even relationships and rivalries of those established in or aiming at power. These seem to be precisely what law as “intellect without desire” or “reason free from passion” is supposed to prevent and protect against. A typical expression of this interpretation is the passage: “one might say that it is a bad thing [*phaulon*] for a human being, who has the passions that arise in the soul, to be entirely sovereign [*kurion*] rather than the law” (1281a35–37).⁶ Ideally, the laws treat everybody equally, or better put, they treat essentially similar cases similarly, without partiality, unswayed by admixture and entanglement with human interests, desires, or emotions. Though they do possess reason and intellect, human beings would be tempted to (and would in many cases) allow their desires, their emotions, their drives, their personal, class, or other interests to corrupt right determination of matters. The rule of law might be envisioned then as the rule of reason *per se*, of a rationality, admittedly a human one in its origin, but purified of its involvements with the non- or less rational parts of the human being, and then externalized in codes and institutions, thereby provided a measure of independence from individual human beings.

⁵Other features are important as well, among these being: 1) that there are procedures for reassessing and modifying the laws, or for resolving conflicts arising between laws; 2) that those entitled to participate in political society, i.e. the citizens, for Aristotle those who have a share in holding offices and taking part in (some) deliberation, are allowed to participate; 3) that those whose interests or desires are thwarted by properly arrived-at legal or political decisions recognize and abide by those decisions; 4) that knowledge of the content of the laws is, if not publicized, at least generally available.

⁶Two other examples are: “*This is why we do not allow a person to rule, but rather the law, namely that the person will [assign him or herself too large a share of good things and too little a share of bad things], and they will become a tyrant. For, the ruler is a guardian of the just*” (1134a35–b2); “*it is just that no one rule or be ruled more than another ... now, this is law, for the law is an ordering (taxis). So, according to the same line of reasoning, it is preferable that the law rule than any one of the citizens*” (1287a17–22).

Matters are not so simple, however, and law is not so completely separable from passion and desire in Aristotle's moral and political philosophy as one might suppose from the supportive passages thus far cited. While Aristotle does hold out rule of law not only as an ideal but as an essential feature of most well-functioning and -ordered political communities, he also situates law within its proper and real context, one in which human beings remain continually involved, debating and framing laws, interpreting and reinterpreting them, applying them by engaging in judgments about particular cases. In all of these conditions, through its necessary involvements with human beings as the very condition of its ongoing actuality, law once again intersects with human passions, desires, interests, and even with the (admittedly ill-demarcated) set of rivalrous drives and motives assembled under the rubric of *thumos*. This is, in reality, the normal case and condition for law and the rule of law.

Furthermore, Aristotle construes law as intimately, inherently, and inextricably tied in with the teleological orientation and development of the political animal, i.e. human being. Put very simply, registering opposition to an oft-employed trope of late modernity, Aristotle not only believes that one *can* legislate morality, but even that one *should* legislate morality.⁷ Yet more jarring perhaps to certain contemporary sensibilities, Aristotle believes that there exists a range and set of gradations of positive and negative moral values, objects, and conditions, i.e. he has a well-worked out, robust, and substantive view of morality. He also exhibits a realism about the prospects of law steering human beings towards virtue and away from vice. Aristotle does not assume the *fiat* of the legislator can suddenly create virtue or root out vice by decree, nor that it is always an easy task to deliberate and plan how to structure society, whether this be in terms of the most fundamental structure of the regime (*politeia*) or in terms of specific laws, so as to promote virtue and prevent vice. And, in any given society, he assumes

⁷ On this, cf. in particular Bernard Yack, *loc. cit.*; Jill Frank, *loc. cit.*; Steven Salkever, "Aristotle's Social Science", in *Essays on the Foundations of Aristotelian Political Science*, ed. Carnes Lord and David K. O'Connor (Berkeley: University of California Press, 1991), 11–48; Patrick Coby, "Aristotle's Four Conceptions of Politics", *The Western Political Quarterly* 39, n. 3 (1986): 480–503; Howard J. Curzer, "Aristotle's Painful Path to Virtue", *Journal of the History of Philosophy* 40, n. 2 (2002): 141–162.

that the virtuous are relatively few in number,⁸ while of the multitude or the many, “most ... in Aristotle’s view, are radically flawed, though not wholly bad.”⁹

The point important to note here, however, is that the connection between law and virtue and vice again entails involvement with human emotions and desires, for two reasons. First, virtues and vices *have to do* with emotions and desires (as well, as of course, goods, actions, and relationships), so law’s orientation toward promotion of virtue and prevention or punishment of vice will inherently bear on emotions and desires, as well as habits (*ethē*) and characters. Even merely being a “law-abiding” human being is not typically a matter of embodying or obeying a pure, emotion- and desire-less reason.¹⁰ Second, in order for the rule of law to work effectively, in order for laws to be framed, understood and administered *well*, two things are required. Those involved in these activities must themselves possess some solid practical *understanding* of virtues, vices, passions, and motives of human action. And, at least some of those involved have to *be* to some degree virtuous.

In order to explore in further detail several of the most important connections between laws and the rule of law, virtues and vices, affectivity and the passions in Aristotle’s thought, this paper now examines three sets of matters, examining them in sequential order. First, I discuss the affective dimension of human

⁸ Aristotle thinks that those likely, or well-situated, to become virtuous are relatively uncommon. Cf. his discussion in *Nicomachean Ethics* 1179b4–20, in which he suggests that the best we can hope for is steering towards virtue those who are well-brought up and of decent habits and desires. “*For the many are of such natures as to not obey their sense of shame but only fear, nor do they hate bad things (oud’ apekbesthai phaulōn) through a sense of shame, but rather through punishments and retribution (dia tas timorias).*” Why is this so? “*They live according to passion (pathei), and they pursue their accustomed pleasures and the things that will bring them about, and they avoid the opposed pains, not having any notion (ennoian) of the noble and the genuinely pleasant, since they have not tasted it*” (1179b11–6). Likewise, at several points in the *Politics*, he expresses the view that the virtuous will be relatively few. In the *Rhetoric*, however, Aristotle’s dimmest consistently expressed views on the majority of humanity are found.

Still, Aristotle’s assessment of “the many” is not entirely consistent across his entire corpus. For instance, early on in *N.E.* (1105b11–15), while complaining that the many do not do virtuous actions, which if done habitually would make them good people, Aristotle ends up conceding (albeit to complain about their only going this far), that “*by making use of moral terminology (epi ... ton logon katapheugontes), they think themselves to be doing philosophy, and that they will thereby become good people.*” He makes a similar remark in the *Politics*: “*Everyone claims that they have virtue, and they consider themselves capable of fulfilling most political offices*” (1291b5–6). This shows that they do have some moral notions, or put in another way that within their societies, moral notions and corresponding terminology are used and accorded importance.

⁹Jan Edward Garrett, “The Moral Status of “the Many” in Aristotle”, *Journal of the History of Philosophy* 31, n. 2 (1993): p. 171.

¹⁰On this, cf. Shane Drefcinski, “Aristotle and the Characteristic Desire of Justice”, *Apeiron* 33, n. 2 (2000): 109–123.

nature, showing that within an Aristotelian perspective, affectivity in general (and the passions in particular) remain ineliminable from intellect or reason in actual human beings and their moral lives, both as sources for human action, and as subject-matters for the virtues and vices. Second, I argue that human passions and desires remain inescapable within law's functioning, even under the rule of law, examining several different ways in which this occurs. Third, I argue that rule of law requires a certain level of virtue, with which it has a mutually sustaining relationship. In that final section I also briefly consider the problem posed by the person of superlative virtue, concluding that such a possibility does not fundamentally affect the interpretation developed here. Given that the broad lineaments of Aristotle's moral theory are relatively well-known, I confine my discussions of affectivity in Aristotelian moral theory in the next section to simply developing points relevant to the accounts developed in the subsequent sections

II.

A number of philosophical theories of human nature simply oppose modes of affectivity such as desire, emotion, or affection to intellectuality, rationality, or discursivity,¹¹ advocating the affective side or portion of the human being be restrained, reduced, even as much as possible eliminated, but at the very least subordinated to the intellect or reason. Imagining law as "intellect without desire" or "reason free from passion" suggests the prospect of a lack, a removal, or a sort of purification from human affectivity. In suggesting that it is better that the laws rule rather than human beings, the underlying reasoning appears to be that it is better for something which incorporates the powerful intellectual dimension of human being, but also lacks the troublesome affective dimension, to rule, i.e. to govern, to structure the workings, relationships, and interactions of a political community, and to guide the very ways in which conflicts, disagreements, criminality, and ambiguities are addressed.¹² Ernst Barker eloquently expresses

¹¹Stoics emphatically made such a distinction, privileging the rational or "ruling part" to such an extent as to render themselves a paradigm for such positions. By the middle ages, this had become a standard take on Stoicism, and Aquinas provides one example among many in associating the position that all emotions are as such bad with the Stoics (*ST* I-II, 24, 2). Such a position becomes common in early modern thought where for example, Descartes, Spinoza, Hume, and Kant, admittedly in very different manners, articulate such rigid oppositions between intellect and affectivity.

¹²Two modern-day American examples of this, one at the highest, the constitutional level (in Aristotelian terms, the *politeia*), and one at a much lower level, would be the institution of the electoral college as deciding presidential elections, and the federal or state laws governing minimum sentences for particular ranges of crimes.

such a view: “In man reason is close neighbor of many passions and can hardly be heard for their clamour: in law it emerges pure, a clear and solitary voice, which calls aloud through a silence in which all passion is hushed.”¹³

One might assume that firstly because Aristotle develops a hierarchical psychology distinguishing between higher and lower, affective and rational portions and sub-portions of the human soul,¹⁴ and secondly because he also explicitly associates moral virtue and even the lesser state of self-control with the rule of reason or rationality, that he too views affectivity and the affective dimension of human being as something primarily in need of suppression or subordination. This is, however, not the case for Aristotle’s theory. He also is no romantic partisan of irrational emotion against sterile rationality, and does not adopt any proto-Humean reduction of reason to a mere “slave of the passions” or desires. He develops an account in which affectivity and intellect may also cooperate with or complement each other. Recent commentators in particular have drawn attention to the fact that Aristotle’s ethico-political thought does not present checking, suppression, or elimination of the passions as the only possible (or even desirable) resolution to the problems the passions pose.¹⁵ It is possible, indeed imperative, to shape, to transform, to “reform” or “educate”,¹⁶ in some sense to *determine* (one important sense of that polysemous term *archein*) the passions

¹³ *The Political Thought of Plato and Aristotle* (New York: Dover, 1959), p. 321.

¹⁴ One ought to hesitate to reify the distinctions Aristotle makes within the soul in the ethico-political works, given his own misgivings expressed in the *De Anima* at 432a22–b7 and 433a33–b5. Even in the *Nicomachean Ethics*, Aristotle entertains the possibility that the irrational and rational parts may not be separable like physical things, but rather separable in thought, or more literally, through reason(ing) (*tōi logōi*) but inseparable as they truly are in nature (*akbōrista pephukota*, 1102a30–34). Cf. also *Eudemian Ethics*, 1219b31–37.

¹⁵ Among the works developing this line of interpretation are: Leslie A. Kosman, “Being Properly Affected: Virtues and Feelings in Aristotle’s Ethics”, in *Essays on Aristotle’s Ethics* (Berkeley: University of California Press, 1980), 103–116; Nancy Sherman, *The Fabric of Character: Aristotle’s Theory of Virtue* (Oxford: Clarendon, 1989); Gisela Striker, “Emotions in Context: Aristotle’s Treatment of the Passions in the Rhetoric and His Moral Psychology”, in *Essays on Aristotle’s Rhetoric*, Amélie Oksenberg Rorty, ed. (Berkeley: University of California Press, 1996), 286–302; Barbara Kozziak, *Retrieving Political Emotion: Thumos, Aristotle and Gender* (University Park, Penn. State University Press, 2000); Deborah Achtenberg, *Cognition of Value in Aristotle’s Ethics* (Albany: SUNY Press, 2002); Marlene Sokolon, *Political Emotions: Aristotle and the Symphony of Reason and Emotion* (DeKalb, IL: Northern Illinois University Press, 2006). Cf. also my “Aristotle’s Psychology, Emotion’s Rationality, and Cognition of Being: A Critical Note on Ogren’s Position”, *Minerva* 11 (2007): 30–53 and “Value, Affectivity, and Virtue in Aristotle, Scheler, and Von Hildebrand”, in *Phenomenology and Virtue Ethics*, Kevin Hermsberg and Paul Gyllenhammer, eds. (London: Bloomsbury, forthcoming).

¹⁶ The terms felicitously chosen by Nancy Sherman, *loc. cit.*, p. 166f. Gisela Striker and Deborah Achtenberg, *loc. cit.*, both of whom acknowledge Sherman’s influence in the articulations of their Aristotle-interpretation, have in certain respects gone even further.

and desires of the human soul. In human beings, this fundamental dimension of affectivity is always present and working away. Aristotle clearly considers this dimension as inextricable not only from human nature, but also constantly involved in human action and moral life, making the same basic point in sets of passages scattered across his corpus. These discussions are oriented by several distinctly different motivations, three of which are addressed here.

The first of these is the types or modalities of affectivity, a matter investigated and sketched, but admittedly underdetermined by Aristotle. In his *Rhetoric* Book 1 analysis of most basic causes of all human actions,¹⁷ those that do stem from the person either are through habit (*ethos*) or through affective desire (*orexis*), including rational (*logistikē*) desire¹⁸ and irrational desire. He further subdivides irrational into anger (*orgē, thumos*)¹⁹ and “appetite” (*epithumia*), defined as “desire for the pleasant” (*tou hēdeos ... orexis, 1370a17–18, also 414b6–7*).

Affectivity, or desire in its broadest sense of *orexis*, thus comprises multiple modalities or forms. In the *Eudemian Ethics*, he again divides *orexis* into wish or rational desire (*boulēsis*), spirited desire (*thumos*) and desire for the pleasant (*epithumia, 1223a26–27*).²⁰ To fill out this list, however, the term “passion” (*pathos*) must be added. The passions or emotions (*pathē*), as Aristotle discusses them in the *Rhetoric* and in the ethico-political works, are clearly forms of affectivity. In certain cases, for instance that of anger, the very definitions Aristotle provides include the term “desire” (*orexis, 1378a30–31*).²¹ The passions or emotions are quite clearly determinant causes for many human behaviors, not least those typi-

¹⁷ One might argue that, as with some of Aristotle’s analyses in the *Rhetoric* (e.g. as in his Book II analysis of the passions), in this one he is not attempting to provide a comprehensive and scientific account of the matter under discussion but only one adequate to the needs of the orator. His specific language here, however, argues against that interpretation. Translated very literally, the passage runs: “Everything [*panta*] that every person [*pantes*] does is either through/from themselves [*di’hautous*, i.e. through those persons] or not through/from themselves” (1368b32–33). Further supporting my interpretation is that Aristotle states that other distinctions are superfluous here, since the causes he lists are even more basic, and are involved in the other distinctions (1369a7–19).

¹⁸ Aristotle explains rational desire here as *boulēsis*, which can be rendered as “wish”, “will”, “intention”, or even “planning”, but he also uses the term “reasoning” (*logismon*).

¹⁹ In that passage and in the *Rhetoric* more generally, Aristotle uses *orgē* and *thumos* synonymously for the passion of anger, most explicitly at 1369b11. He does, however, use cognates of *thumos* in line with its broader sense akin to but not entirely the same as the Platonic “spirited part of the soul”, so that it will include anger but also extend to the other thumotic passions (e.g. envy, emulation, indignation) and to thumotic drives or desires (e.g. ambition and love of victory). In other works, Aristotle does use *thumos* in such a broad sense, but he also sometimes uses it as synonymous with *orgē*.

²⁰ The same division of modalities of affectivity is found in *De Anima* at 414b3.

²¹ John Cooper notes that anger is the only emotion explicitly including *orexis* in its definition(s) (Aristotle defines anger in the *Rhetoric* and the *Topics*), but notes that hatred explicitly includes *epheis*,

cally associated with and characteristic of particular passions. In addition, in the broadest sense of the term passion, as something one undergoes, which imposes or impresses itself, or is impressed or imposed on one, *thumos* and *epithumia* also fall within the scope of passion, though not necessarily the more restricted sense of “emotion”.²²

A second key aspect of affectivity is its involvement in action, orientation, attitude, and outlook. Emotions and desires color or condition basic attitudes and judgments people adopt on various matters.²³ Aristotle’s rather pragmatic *Rhetoric* definition sets this aspect at the fore: “The passions are those states through which those who are changed by them differ with respect to judgments” (*pros tas kriseis*, 1378a19–20). He provides specific examples of this common occurrence: “Things do not appear the same to those who feel friendship and those who hate, nor to those who are angry and those who are calm; rather [they appear] either entirely different, or different to some degree” (1377b31–1378a1).²⁴ By Aristotle’s account, affectivity is also involved in all action.

In *De Anima* Book 3 (432b26–433a30), he states that intellect (*nous*), or the calculative or reasoning faculty (*to logistikon*),²⁵ does not on its own move a human being, i.e. determine a human being in its actions.²⁶ Thought or intellect concerned with practical matters cannot produce any movement or action except when affectivity of some sort plays a contributing role. Affectivity (*orexis*) need

“desire” in its definition, that friendliness includes desire implicitly, and that kindly feelings (*kharis*) references *epithumia*. “An Aristotelian Theory of the Emotions”, in *Essays on Aristotle’s Rhetoric*, p. 249.

²²For nuanced discussion of the relation of *epithumia* to the passions, cf. Stephen Leighton, “Aristotle and the Emotions”, in *Essays on Aristotle’s Rhetoric*. Gisela Striker also argues convincingly: “As is his custom in the *Rhetoric*, Aristotle avoids repetition by dealing with a subject only once, even if it should be considered from different perspectives. So he does not pick up *epithumia* again in Book 2, and he does not emphasize the role of the passions as motives for actions in the longer section, leaving it to the reader to figure out how passionate desire may influence judgment. ... there may be yet another reason for the separate treatment of *epithumia* in Book 1, namely that Book 2 focuses exclusively on emotions as relating to other people. Passionate desire or appetite may often be directed at other things that one would like to have rather than at persons, and so it might not fit in very well into the schema that Aristotle uses in dealing with the other emotions.” *Loc. cit.*, p. 269.

²³Leighton, *loc. cit.*, also provides detailed and insightful discussion of precise ways in which alteration of judgment through the workings of emotion takes place.

²⁴Aristotle raises worries about this at several points in *Politics* Book 3, particularly at 1286a34–5: “the judgment of a person mastered by anger or some other emotion will of necessity be corrupted.”

²⁵Earlier in *De Anima*, Aristotle glosses “intellect” as that through which one (or more precisely, the soul) thinks (*dianoetiai*) and understands or assumes (*bupolambanei*, 429a23).

²⁶Nor, for that matter, in that section of *D.A.*, do the nutritive faculty (*bē threptikē dunamis*) or sensibility or the sensed thing (*aisthēsis, to aithetikon*) cause movement. “For such movement is always on account of something, and is accompanied by imagination or desire (*meta phantasias ē orexeōs*, 432b16–7).

not be the dominant determining aspect in the movement (*kuria tēs kinēseōs*), as the case of the self-controlled shows. Even when they are affected (*oregomenoi*) and desire (*epithumontes*) they are able to not do what they have a desire for, but follow what intellect dictates. But, this does not mean that in a human being, intellect purified of desire or affectivity simply overcomes, subordinates, and controls the desires; rather, it is precisely *because* affective desire of one sort or another permeates mind and thinking that in some cases intellect, or to use terms Aristotle employs in other places, the rational, or calculative, or deliberative part of the human soul, can exercise some control and guidance over the other desires. “Intellect does not seem to produce movement in the absence of desire” (*aneu orexeōs*, 433a23).²⁷ Thus, when intellect successfully dictates action opposed to what a passion or desire bids, it is because of a collaboration between intellect and another determinate modality of affectivity. The *Nicomachean Ethics* Book 6 analysis of action, mind, and affective desire echoes this, with minor terminological variations.²⁸ Again, other possible contenders for producing human action, sensation and thought (*dianoia*) do not provide the origin or the principle (*archē*) of action (1139a19–20, 36–1139b1). Rather, affectivity provides this.

That work introduces an additional consideration. The proper function (*ergon*) of the practical mind (*praktikou dianoētikou*) is, as Aristotle tells us, “attaining truth in accordance with right affectivity” (*hē alētheia homologōs ekhousa tēi orexei tēi orthēi*, 1139a30–31). This formulation highlights the importance of the interplay, the interaction between intellect and affective desire, something particularly evident in *proairēsis*, a term resistant to easy translation, but typically rendered as “moral choice” or “deliberate choice”.²⁹ “Moral choice is either intellect bound up with desire [*orektikos nous*] or desire bound up with intellect

²⁷ Another important aspect of Aristotle’s *De Anima* discussions of human action, mind and desire is the central role imagination (*phantasia*) plays in practical reasoning and the determination of human action, even in the directing of desires. Aristotle famously remarks at one point that “the soul does not at any time think (*noei*) without some imagination” (431a17). Attention to Aristotle’s analyses of the passions in *Rhetoric* Book 2 highlights the centrality of imagination in the passions. Book 1, specifically 1369b–1370b, connects imagination with appearance, pleasure, desire (*epithumia*), goodness, and human actions. The role of imagination in moral and political life in Aristotle’s thought merits much more attention, but a study of that sort cannot be attempted here.

²⁸ In some cases, Aristotle uses *praxis*, rather than *kinēsis*, or *dianoia*, rather than *nous*.

²⁹ No entirely satisfactory and non-misleading English cognates or even renderings exist. On the difficulty of translating this term, cf. Charles Chamberlain, “The Meaning of *Prohairesis* in Aristotle’s *Ethics*”, *Transactions of the American Philological Association* 114 (1984): 147–157. It should also be pointed out that similar problems of translation exist for instances of *prohairesis* in other ancient Greek authors, e.g. Epicurus, who also uses the term significantly and frequently, though with somewhat different meaning and extension than Aristotle.

[*orexis dianoētikē*], and a human being is this sort of principle [of choice and action]” (1139a5–6).³⁰ On the one hand “moral choice exists neither in the absence of intellect or thought (*aneu nou kai dianoias*) nor in the absence of moral habit (*aneu ēthikēs hexeōs*)” (1138b33–34), and on the other hand, desire, affectivity, emotion lie continually at its very basis, supplying its *archē* (1138b31–32).

This leads to the third important feature of affectivity in Aristotle’s account. Structures and patterns of a person’s desires (as well as their actions and attitudes expressive of them) admit of being evaluated in terms of moral qualities, including but not restricted to those of morally good or bad, just or unjust, useful or harmful, noble or base. In Aristotle’s view, our grasp or perception of these moral qualities, and the possibility for assessment in terms of them, stem from a distinctive characteristic of our human nature, namely our possession of *logos*, reason or language (1253a10–19). Affective desire, in particular that embodied in passions or emotions, is not only evaluated through reason, but also can be brought in line or into harmony with reason, and it is precisely in this that moral virtue, *aretē*, moral excellence or goodness, resides.

Virtues are determinate ways in which rationality (or a higher degree of rationality) is introduced and maintained in our fundamental patterns of desires and actions. Aristotle’s definition emphasizes reason’s role. “Virtue is then a state involving moral choice [*hexis proairetikē*] that is the mean relative to us, this mean being determined by reason [*hōrismenēi logōi*] and being as the prudent person would determine it” (1107a1–2). The moral choice involved bears on the main concerns and primary subject-matters of virtues and vices, human passions or emotions (*pathē*) and human actions (*praxeis*).³¹ While the majority of the virtues have to do with emotions, some do not bear on particular emotions, but on the other modalities of affectivity that lead to action. Desires for pleasures (*epithumiai*) are a particularly interesting set of cases, since Aristotle on the one hand speaks of there being good or bad pleasures and good or bad desires, and on the other hand goes so far as to mention creation of new desires.

³⁰In *Nicomachean Ethics*. Aristotle also specifies that choice is not the same thing as various modalities of *orexis*: desire (*epithumia*), spirited desire (*thumos*), or wish (*boulēsis*) (1111b11–12). This would make it yet another distinguishable (though perhaps not entirely separate) modality of *orexis*, and Aristotle suggests calling it “deliberating desire about things up to us” (*bouleutikē orexis tōn en hūmīn*, 1113a11).

³¹In the ethical works, Aristotle makes this point repeatedly that virtues and vices are concerned with passions and actions, e.g. at *N.E.*1107a3–5; 1109b30; *E.E.*1220a29–32; 1221b3437. Aristotle indicates at other points that virtues and vices also bear on other related matters as well: pains and pleasures (1104b4–1105a16; 1106b20; 1106b24–5; 1221b33–1222a5), desires for pleasures (*epithumiai*, 1105a22, and 1220b13), or for things one thinks will provide or allow pleasures (e.g. wealth); and the thumotic drive of ambition.

Turning specifically to the relationship between virtues, vices, and passions or emotions, the features of Aristotle's ethical theory relevant here can be summarized in three main points. First, virtues and vices are not passions, but are habitual states (*hexeis*) bearing on passions that determinately structure how passions translate into human actions. In the *Nicomachean Ethics*, Aristotle calls virtues and vices, translating quite literally, "those states with respect to which we have [*ekhomen*] the emotions [*ta pathē*] well or badly [*eu ē kakōs*]", i.e. the states in which we are well or badly off (1105b26–27). The *Eudemean Ethics* is more explicit: "the states [of virtues and vices] are the states that cause the passions to be present in accordance with reason [*kata logon huparkhein*] or the opposite" (1220b18–19).

Second, although Aristotle generally characterizes virtues as means between vicious extremes,³² both discerned by and in accordance with reason, in his more specific discussions, the rationality bearing on the passions is actually more complex. The index of virtue is not simply to feel emotions in a mean amount, a "mere mediocrity of passion", as Hobbes would later caricature the Aristotelian view, but rather to do so when one ought to (*hote dei*), in the right situations (*ep'h'hois*), towards those one ought to (*pros hous*), on account of the right things (*hou heneka*), and as one should (*hōs dei*, 1106b21–22). This is because the mean is not something discoverable and fixable once and for all possible situations; it is not of the thing, i.e. the passion or the connected action (*ou to tou pragmatos*), but the mean relative to us (*to pros hēmas*, 1106b8).³³ Within the virtuous person him- or herself, and also in the criterion and the model provided by virtuous people, a sort of embodied rationality is at work, something *akin* to the rationality without passion, or the mind without desire, to which the rule of law appeals. It is not the same, however, precisely because the virtuous person *does* experience the passions, and their character-forming and -expressing deliberate

³²It must be mentioned that in the *Eudemean Ethics* list of the virtues and vices and, referring to the contrasted virtues and vices, Aristotle states that "these passions (*ta ... pathē tautā*) and other like ones take place in the soul, and all of them are spoken of with either respect to excess or deficiency" (1221a13–15). From this, one might conclude that, at least in the *E.E.* Aristotle's actual position is that vices (and perhaps the virtues) are quite simply passions or emotions. Given all the other things Aristotle says in *E.E.*, it would seem that this passage should be interpreted as Aristotle speaking rather elliptically, using the term *pathē* in an infelicitous and non-rigorous manner. Specifically, 1) in the short explanations of the extremes and means that follow, only some of them are described in terms of passions (*pathē*), while one is described in terms of *epithumia*, and many of them are described simply in terms of actions. And, 2) following that, Aristotle gives a discussion of ways in which one goes to excess or is deficient, there using not the term *pathē*, but the term *pathēmata* (1221b10).

³³For further discussion of the specificity of the mean in relation to passions, actions, and reason, cf. Kosman, *loc. cit.*, and Sherman, *loc. cit.* (ch. 2 in particular).

choice (*proairēsis*) involves either mind bound up with desire (*orektikos nous*) or desire bound up with mind (*orexis dianoētikē*). As Deborah Achtenberg puts it: “Ethical virtue, then, is not a disposition to destroy or force our emotions. Instead, it is a disposition to experience emotions concordantly with what we appropriately take to be our goals and to experience emotions concordantly with their own internal goals.”³⁴

This leads to the third point, which is that the passions’ amenability to rule or shaping by reason, whether reason instituted in law or reason embodied in human beings, lies on a sort of continuum, depending on the condition of the person undergoing the passions. Between the conditions of the virtuous person and the truly vicious person, there are also those who *are* self-controlled and those who *lack* self-control. In these cases, the passions are still amenable to reason or rationality, but not in precisely the same ways as with the virtuous person. This is an issue of considerable complexity to which I do not intend to do justice here, but only note two points. First, in all who are not entirely virtuous, reason or mind will require other supports and aids in relation to the passions and desires. For worse people, this may involve considerable coercion and little (non-violent) persuasion. Even for better people, pure rationality, or “mind without desire” will not suffice on its own as motivation. Second, counterbalancing or compensating for this, since the irrational, desirous and emotion-feeling part of the soul can be harnessed by reason, the passions themselves can be educated or transformed into states where they actually cooperate with, and are perhaps even indispensable to, the rule of reason or mind. That is precisely what Aristotle seems to be implying in making the distinction between “the self-restrained person” in whom “the irrational part of the soul at least listens to reason” (*peitharkhei ... tōi logōi*) and the virtuous person in whom that part is “even more liable to listen (*euēkoōteron*) to reason, for every part of that person is consonant with reason (*homophōnei tōi logōi*)” (1102b27–29).³⁵

³⁴ Achtenberg, *loc. cit.*, p. 55–6

³⁵ Again, Sherman, Striker, and Achtenberg, among others, have led the way recently in viewing rightly formed passions as playing central roles in the perception of value or “ethical salience” (Sherman’s term) in relation to particulars and particular situations. That the passions admit this possibility stems from the fact that the passions, while not being rational, all include cognitive aspects and orientations, a point noted and developed by W.W. Fortenbaugh in his classic *Aristotle on Emotion* (New York: Harper and Row, 1975).

III.

In Aristotle's thought, law bears upon human passions and desires in several ways. One explicit motive for advocating rule of law is minimization of the rule by individuals who would be themselves ruled by their individual and to some degree arbitrary desires and passions. In practice, another yet broader function of law is to prevent or to punish certain human actions motivated by passions or desires and at the same time to promote other likewise motivated human actions. Both of these functions also involve attention to virtues and vices, in particular to their nexus in justice. The relationship between the rule of law and passions or desires is not entirely one-way, however, for several reasons. First, law requires application and interpretation, and this is done by human beings. Second, if the laws are to be well laid-out, those who make the laws themselves both require a good understanding of human nature, the passions, desires, and virtues and vices, and need to be virtuous to some degree.

Numerous passages attest to the fact that, in Aristotle's view, what laws prescribe or proscribe is not simply particular kinds of actions, but also associated states of character, virtues and vices, which have to do with passions and desires.³⁶ For instance, in the *Nicomachean Ethics*, he remarks that lawgivers punish and mete out retribution to (*kolazousi kai timōrountai*) those who do vicious deeds (excepting extenuating circumstances) and reward (*timōsin*) noble deeds, precisely so as to encourage (*tous men protrepontes*) the latter and discourage the former (*tous de kōlusontes*, 1113b23–26, cf. also 1130b22–26). Likewise, in 1129b19–25, he points out that the law prescribes (*prostattei*) certain types of conduct (*erga*), providing quite specific examples: those of the courageous person (e.g. not to leave one's assigned post), of the temperate (not to commit adultery or *hubris*), of the mild (not to strike or to speak badly of someone with whom one is angry). As the passage continues, Aristotle speaks of the law "likewise respecting the other virtues and the vices, telling one to do the former and forbidding the latter, doing all this rightly (*orthōs*) if the law is rightly laid out (*ho keimenos orthōs*), but poorly if simply thrown together (*apeskhediasmenos*)."³⁷

³⁶There is admittedly some idealization going on here in Aristotle's account. In *Politics* Book 7, Aristotle states that the Greek political communities regarded as having the best political systems (*arista dokountes politeuesthai*) and the legislators who established them do not seem to have systematically ordered (*suntaxantes*) the laws (or education for that matter, which Aristotle later says nearly everyone has neglected!) in relation to *all* of the virtues (*pros pasas tas aretas*, 1333b5–11). Still, in such cases, the laws will still prescribe some virtues and proscribe some vices.

³⁷In *Politics* Book 7, Aristotle similarly advises legislators to focus on how the virtues and other moral states needed in war or business and the virtues needed during leisure and prosperity (i.e. courage, toughness, justice, and temperance) are to be cultivated (1334a9–40).

The context of the last passage is Aristotle's discussion of "legal justice". One of the main senses of "just" or "justice" is that which is according to law, i.e. the laws available to and within a community. What is of particular interest here is that Aristotle conceptualizes legal justice as what he calls "perfected virtue" (*aretē teleia*) or the whole of virtue (*holē aretē*), virtue brought to its fulfillment. He distinguishes justice in this sense from the (other) virtues³⁸ in that it is not perfect virtue simply or absolutely (*haplōs*), but rather in relation to other people (*pros heteron*, 1129b26–27). Put in another way, a virtue is simply *that* particular habitual state, while justice consists in that state in relation to others, modifying not only the orientation but the scope of that state (1130a13–14).³⁹ Likewise, there is a corresponding sense of injustice which extends to the whole of vice. Even in modern liberal conceptions of rule of law, if there is any virtue that rule of law is supposed to enshrine and promote, it is justice. If there is any vice it is supposed to prevent and rectify, it is injustice. From an Aristotelean perspective, this necessarily entails consideration of the other virtues and vices.

In a related discussion in the *Rhetoric* (1368b12–24, cf. also *N.E.* 1130a28–32), Aristotle tells us that "what leads people to choose to do injury and to do bad things against the law" is vice (*kakia*) and lack of self-control (*akrasia*), both of which have to do with mismanagement, lack of reasoned control of, or failed resistance to the passions. When one has a vice or weakness (*mokbtheria*), one is unjust with respect to the things that the weakness bears on. Like the type of justice that comprises complete virtue, but different in definition from it because the actions it produces are considered in relation to other people (*pros heteron*), the various vices are injustices in relation to other people, and in this way injustices stem from the badly managed, educated, or controlled passions associated with those vices. To be more precise, they stem not only from passions but also from other forms of affectivity, as Aristotle's examples indicate. For, while the coward is unjust with respect to fear, and the sharp-tempered with respect to anger, others are unjust with respect to objects they desire, through *epithumia* or *thumos*. The former would include the illiberal with respect to (his or her *epithumia* for) money and the intemperate with respect to bodily pleasures; the latter would include the ambitious (*philotimos*) with respect to (his or her thumotic drive for) honor and the antagonistic (*philonikos*) with respect to victory.

³⁸For complementary discussion of "two complete moral virtues", namely, the justice discussed here but also magnanimity, cf. Susan Collins, "Moral Virtue and the Limits of the Political Community in Aristotle's *Nicomachean Ethics*", *American Journal of Political Science* 48, n. 1 (2004): 47–61.

³⁹This issue arises in the *Politics*, as a claim made to the right rule on the part of the virtuous. "We will say that they make just as just a claim on virtue's part, for we say that justice is a community virtue (*koinōnikēn* ... *aretēn*), which all the other virtues necessarily accompany" (1283a39–40).

Aristotle distinguishes another sense of justice relevant here, one which does not fit neatly into legal justice, and which highlights problems inherent in application of laws. Equity (*to epieikes*) is an “adjustment” or “rectification” (*epanorthōma*, 1137b13) of legal justice, and it becomes needed in atypical cases which do not fit properly under law’s universality. In such cases, there is a sort of deficiency within, or perhaps introduced by, law’s own instantiation of rationality. On the one hand, as Aristotle says, laws are universal rules (*ho ... nomos katholou pas*), but there are cases or matters in which one cannot rightly (*orthōs*) speak in universal terms. This does not mean that the *law* itself is deficient, or any less right (*orthos*), for the problem lies in the matter itself (*en tēi phusei tou pragmatos*), which raises the requirement of an adjustment or rectification of the law. On the other hand, Aristotle *does not* explicitly say, but it nevertheless makes sense from an Aristotelian perspective, that certain of the human passions, e.g. pity, indignation, anger, etc., could play some role in this rectification. Needless to say, in these cases the passions could also lead one’s judgment astray, but to acknowledge this does not mean nullifying the saliency of the passions in certain cases, e.g. when the virtuous or self-controlled or at least morally attuned person is making the judgment.

The problem of application leads directly into consideration of how passions and desires necessarily intrude within the rule of law, for all law requires not only framing originally, but subsequent enforcement and application, which requires human interpretation. Aristotle’s position on this matter is rather nuanced. He does not simply say that the laws are universal rules which require an interpretation in every particular case, an interpretation which would be subject to all the vicissitudes and arbitrariness of human passions and desires against which the rule of law was to be both a remedy and a bulwark. In many, perhaps even most cases, Aristotle seems to think, application of law to particular cases is rather straightforward and unproblematic. But, there is also a complex dialectic at work between the laws and the human interpreters of the laws. For instance, in matters of equity, he advises rectifying matters by deciding as the legislator presumably would decide if he or she were present and would have legislated had he or she known about the present problematic case (1137b23–24). Correct interpretation of the law must indeed actively, productively extend beyond the rationality of the law and that of the lawgiver, but this interpretation itself still remains partly determined by them.⁴⁰

⁴⁰Sherman articulates Aristotle’s claim well: “not that the law is subordinate to a transcendent intelligence, but that law itself is intelligence; it has its own rationality or logos... Accordingly, the

The *Politics* discussions in which are embedded the passages advocating rule of law on account of its affectless rationality also contain passages articulating the dialectic of right application. Specifically, the 1286a discussion is motivated by the question whether it is better to be ruled by the best people or the best laws, and it is quite literally a dialectical one, where Aristotle is weighing plausible and argued claims on both sides against each other, aiming at discerning what is true on each side, and if possible arriving at a position containing or more fully elaborating their strong points. Against what we might call the “pure rule of law” position, one can argue that “the laws deal only with the universal and do not extend their order to what actually takes place” (*ou pros ta prospiptonta epitattein*, 1286a11–12), necessitating that human beings interpret and apply the laws in specific cases. Still, Aristotle says that “the universal rule or reason (*ton logon ton katholou*) must be there for the rulers,” i.e. the same rationality as that instituted in laws. Likewise, in the 1287a discussion, which includes the “mind without desire” passage, “the law purposefully educates the rulers, and then hands the remaining matters over to their best judgment to judge and to manage, and it even lets them rectify [*epanorthousthai*] it with whatever seems to those who have experience [*peirōmenois*] to be something better than the arrangements that are currently established” (1287a25–28).

Recognizing that the passions and desires of individuals will necessarily come back into the rule of law through application, Aristotle in two places (1282a14–b14, 1287b23–32) favorably considers the possibility of having a number of human beings involved in interpretation and application, making similar points in both discussions. The first of these is that in general a decision will be better, i.e. less likely to go astray, when more people are involved in thinking it through.⁴¹ The second, however, is that there are preconditions for this otherwise highly debatable assertion. Each one of the participants must have been educated by the law (*pepeaideumenos hupo tou nomou*, 1287b26), a process that, given this terminology Aristotle employs, is not merely a matter of being informed, but a matter of having been morally well-formed. But, the laws must also be *of the right sort* to be able to educate rightly. This raises a difficulty (*aporia*): the laws *ought* to be sovereign (*kurious*) when they are “rightly laid out” (*keimenous orthōs*, 1282b3–4),

impersonality of reason does not fix law as external or rigid, but rather establishes it as an expression of ongoing and active reason. What is final is not the deliverances of written law, but rather the ‘best judgments’ of those who, guided by experience and the law, can improve upon it.” *Loc. cit.*, p. 14–15.

⁴¹ Aristotle provides several lines of reasoning to justify this, all of which are valid only given certain conditions. Cf. also the discussion at 1281a39–b22.

but *when* is this the case? “It is not clear,” Aristotle says, “of what character [*hopoious ... tinas*] the laws must be in order to be rightly laid out” (1282b6–7).

Aristotle follows with two important sets of remarks addressing this question. First he states: “the laws themselves, at the same time as and similarly to constitutional regimes, can be of bad or good character [*phaulous ē spoudaious*] and just or unjust” (1282b8–10), clearly a doctrine that must qualify his position on rule of law and the seeming identification (in one sense) of the just with the lawful and the unjust with the unlawful. Laws themselves can be evaluated in moral terms, and can be found wanting, not only because of their universal scope, but because laws themselves can be fundamentally defective in their rationality. Explaining this further is the second set of remarks. In a political community, the laws must be laid out (*keisthai*) in relation to the type of constitution, so those that are laid out according to the correct constitutions (*kata tas orthas politeias*) will be just, and those according to the corrupt ones will be unjust (1282b10–14).⁴² In point of fact, a defining quality of the more extreme forms of the corrupt constitutions is the absence of rule of law, precisely because something, or rather someone else rules. In oligarchies, it is a privileged few (1292b5–10), distinguished by wealth or birth⁴³ rather than virtue. In democracies, it is the many or the poor, but they are themselves led by demagogues (1292a4–32, 1293a10–11). Interestingly, in tyrannies, the most corrupt form, the tyrant is him- or herself influenced by flatterers. In each and all of these cases, rule of law is not only factually not present; strictly speaking it is not possible.⁴⁴ The laws that do exist in such a corrupt community will not be rightly laid out, not least because those making and interpreting the laws follow their passions and desires. They lack needed virtues, and they therefore create and perpetuate conditions allergic both to virtues and to virtuous people, to whatever could bring their own passions and desires into better order.

⁴² Later in Book 4 (1289a12–25), Aristotle will insist that the laws must be laid down (*tithesthai*, the correlative verb to *keisthai*) in relation to the constitutions, rather than the reverse. Two points are of particular interest here. First, although Aristotle says that everyone *does* lay laws down (*kai theithentai pantas*) in accordance with the constitutions, clearly he *does not* believe this, since he has just said: “it requires practical wisdom to see which laws are best, and which ones best befit (*barmottontas*) each kind of constitution.” Second, the example he provides bears specifically on corrupt constitutions, i.e. democracies and oligarchies, but refers to their different subtypes, the key point being that, if there are different subtypes, some worse and some better, the same laws will not be useful for all of them.

⁴³ Aristotle’s views on the significance of good or high birth (*eugeneia*) in politics and in common life in general would provide an interesting study which cannot be attempted here. Suffice it to point out that in *Politics* Book 3, it is one of the bases for claims to rule, and in Book 4, again discussing claims to rule he notes its ambiguous status: good birth accompanies both wealth and virtue (1294a21–22).

⁴⁴ Aristotle goes further: “Where the laws do not rule, there is no constitution” (1292a32–33). But this must be understood as a hyperbolic statement, true only when highly qualified.

Properly ordered human passions and desires enter into the rule of law in a last important way which leads into the final section of this paper. Those who make the laws, as well as those who evaluate and administer them, must possess adequate practical understanding of human nature, including the ways in which human desires and passions work, the virtues and the vices, the goods involved in human life, and the functioning of society and the laws. This will also require that they themselves possess some measure of virtue, some proper and habitual ordering of their desires and passions in line with the dictates of reason. Put in another way, from an Aristotelian perspective, a precondition for the rule of law to be effective in a given political community (i.e. for the rule of reason without passion, mind without desire) is the existence and continual cultivation of people who rightly understand what law's rule is oriented towards, people who share in, mirror, and even supplement the law's rationality, and this not because they lack or have suppressed passions and desires but because they have rightly shaped and educated affectivity. Aristotle goes so far as speak of understanding legal justice in terms analogous to his qualifications of virtue as a mean. "People think that one does not need to be wise to know what things are just and what things are unjust, since it is not hard to understand the matters the laws speak about. But, these things are just only in a non-essential way [*kata sumbebēkos*]. For, how things are done [*pōs prattomena*], and how things are divided or assigned [*pōs nemomena*], so that they are just—that is a bigger job than to know about matters of health" (1137a10–14).

IV.

A possibility that Aristotle's thought as we possess it at present affords, but does not explicitly and systematically articulate, is that of understanding virtuous citizens and the rule of law to provide each other with mutual support in a dynamic, long-lasting, but also piecemeal manner. Aristotelian rule of law, as we have seen, requires that the laws be well-laid out by legislators endowed with some measure of virtue and practical wisdom, and that where application and interpretation become necessary, these be properly guided, rather than simply providing occasion to pursue the dictates of less-than-well-ordered passions and desires. Rule of law also characterizes the better forms of constitutions, the constitutions oriented to the common or public good rather than merely the good of those who have, take, or contend for power, where if those ruling are not always themselves entirely virtuous (indeed, that would be a rare case), virtue is at least recognized and promoted, and virtue does provide norms measuring

personal conduct, personal development, and for the laws. The exigencies of the rule of law will be supported and partially satisfied by those who are virtuous, as well as by those who satisfy the somewhat lesser qualification implied in Aristotle's term *spoudaios* (which might be translated as "morally serious" or "committed"), those who are making their way towards virtue, those who (albeit imperfectly) recognize virtue and recognize its qualities and its demands. They may even be recognized by the uncontrolled person (*akratēs*), which points towards an important insight. Rule of law and the virtues have in common their rationality, externalized and institutionalized in law, internalized, modeled, chosen, habituated, and embodied in virtues, or rather in virtuous *persons*. And, the non-affective rationality or "mind" (*nous*) of law has for its origin, its application and interpretation, its very purpose or end the affect-bound rationality of human beings. In return, law is also required to aid in the proper development of those desirous and passionate minds.

The virtues are needed for well-ordered political communities, communities that are oriented towards the human good(s), *eudaimonia* and living well (*to eu zēn*). Aristotle notes that although other things are needed for the political community, "it is clear that justice and political virtue⁴⁵ are needed as well, for lacking these, a city is not even governable (*oude ... oikesthai polis dunaton*)." He qualifies this: "except, lacking the other things, there cannot be a city, while lacking these things it cannot be well [*kalōs*] governed" (1283a20–23). The virtuous play particularly important roles in holding the political community together, keeping it going, and resolving the kinds of conflicts that inevitably arise.

Two very clear examples should suffice. First, in *Politics* Book 4, when enumerating the various classes of the state according to their functions, Aristotle says that "if these [functions] are to take place for political communities, and if they are to be done well and justly, it is necessary that there be some people who share in the type of virtue appropriate to citizens" (*aretēs tēs tōn poltikōn*, 1291a41–b1). Second, in Book 5, discussing factional strife (*stasis*), he notes that those who differ from others because they possess virtue both have the best claim to absolute inequality, so that they would most justly (*pantōn de dikaio-tata*) engage in faction, and are the least prone to press their claims in that way (1301a39–b2). Later in *Politics* Book 7, certain virtues are singled out as

⁴⁵ I take "political virtue" to mean something less than virtue in an unqualified sense, so that it might be viewed as the sort of state of character the *spoudaios* has, *qua* citizen. Aristotle is quite clear that, except in the best regime, the virtue of a citizen is in some way indexed to their political community, specifically to their determinate constitution.

particularly needed for a political community, some in war, some in peace, and some in leisure (*skholē*) and some in its absence (*askholia*), temperance and justice, i.e. citizens who possess and exercise these virtues, being needed in all of these.⁴⁶ These virtues are especially needed in peace, leisure, and prosperity; even the inhabitants of the legendary Islands of the Blest would require them.

One reason Aristotle gives for laws being necessary (*deōimeth' an nomōn*) is that it is a sort of necessary complement to virtue, in a double manner. The laws play a role in aiding the proper development and structuring of the potentially virtuous human being, who when virtuous, or at least on the way to virtue, “pursuing it and becoming habituated to the right things” (*epitēdeuein auta kai ethizesthai*), will be amenable to “the lawgivers encouraging them to virtue and exhorting them [to virtue] on account of its nobility” (*protrepesthai tou kalou kharin*), i.e. to follow the moral rationality embodied and institutionalized in and by the laws, or as Aristotle puts it, “living a life directed towards the morally fine, they will obey reason.” On others, the disobedient and the “simple” (*aphuesteroi*, meaning here “those not well brought-up”), however, the lawgiver, i.e. by the arrangement of the laws, will have to impose punishment and retribution (*kolaseis kai timōrias*),⁴⁷ and even banish the incorrigible (1180a2–12).

Following this passage, Aristotle explicitly discusses the rule of law, this time as a condition for the inculcation of and habituation to virtue in accordance with reason, and he makes several points of interest here. First, he again explicitly connects law and intellect, for the habitual behaviors that comprise virtue “will come to be for those living in accordance with a certain intellectual condition and right ordering (*kata tina noun kai taxin orthēn*) that has force behind it” (1180a18–19). Law has both the power and the rationality required, but here Aristotle explicitly notes law’s dependency, calling it “rational rule (*logos*), coming

⁴⁶The discussion (1333a31–1334b4) is particularly interesting on several counts. First, Aristotle is specifically discussing what the legislator must keep in mind in ordering laws, education, and the goals of a society. Second, there is an explicit connection between legislating and the virtues; Aristotle says “the legislator must internally produce (*empoiein*) [the best principles and laws] within the souls of human beings” (1333b35–39). Third, the virtues Aristotle specifies as needed are: courage, endurance, temperance, justice, and *philosophy* (*philosophia*), a term he uses twice in the discussion (1334a23, 32).

⁴⁷Aristotle’s choice of words here is particularly interesting, since *kolasis* and *timōria*, both of which could be rendered as “punishment”, the latter however also being rendered as “retribution” or “revenge”, are distinguished by Aristotle in terms of their objects and intents. *Kolasis* is for the punished, to “straighten them out”, we say colloquially. *Timōria* is for the one who has been or feels harmed, and it shows up in both the *Rhetoric* and the *Topics* definitions of anger. Perhaps what Aristotle means by coupling the two together is that the laws are to be set up in such a way that wrong acts are punished, in part to correct the offender, in part to satisfy those who feel wronged. It is also worth noting that *kolaseis* is plural, while *timōria* is singular.

from some practical wisdom [*apo tinos phronēseōs*] and intellect" (1180a22–23), i.e. a product of the practical wisdom and mind of the lawgiver. Second, it is clear that inculcation and promotion of virtue will only be provided by good laws (*dia tōn spoudaiōn [nomōn]*, 1180a35–36).

Is there any viable Aristotelian alternative to this mutually supportive interplay between the rule of law and a core of virtuous citizens, leavening a political community including the virtuous and the non-virtuous? Can the rule of law be adequately instated, restored, maintained, safeguarded by mechanisms other than those of virtue? Or, perhaps, can the rule of law actually be dispensed with? One possible type of case Aristotle definitively raises and considers is when a person clearly surpassing others in virtue is available,⁴⁸ and he actually seems to endorse this type of political arrangement, but only qualifiedly. "It would be just," he says, "for a family (*genos*) to be made a ruling [one], or for a king to be sovereign in all matters," but only on the condition that such a family or person "differs so much in virtue that their virtue surpasses (*huperēkhein*) that of all of the others" (1288a15–19).⁴⁹ The extent of surpassing required is revealed by several remarks. Such a person in some sense goes beyond nature, "for it is not natural (*ou gar pephuke*) that a part surpass the whole, but the one who does surpass in this way (*tēlikautēn huperbolēn*) does happen to do this" (1288a27–28). Their virtue must not only surpass that of other individuals considered singly, but also of any association of these individuals assembled together, to such a degree that comparison is impossible (*mē sumblētēn einai*, 1284a3–7). Such a person is "like a god among men" (1284a11). Going even further, "in the case of people of this sort there can be no [other] law, for they themselves are the law" (*autoi ... nomos*, 1284a13–14).

How should this prospect be understood in terms of our project here? Such an apparent exception to the regnant status accorded the rule of law in Aristotelian moral and political theory would not have much impact on the main ideas developed here, namely that law construed as rationality unencumbered

⁴⁸For discussions of this, cf. Yack, *loc.cit.*; Frank, *loc. cit.*; Bates, *loc.cit.*; W.R. Newell, "Superlative Virtue: The Problem of Monarchy in Aristotle's *Politics*", in *Essays on the Foundations of Aristotelian Political Science*, 191–211; Thomas K. Lindsay, "The God-Like Man versus The Best Laws: Politics and Religion in Aristotle's *Politics*", *Review of Politics* 53, n. 3 (1991): 488–509; and Jeremy Waldron, "The Wisdom of the Multitude: Some Reflections on Book 3, Chapter 11 of Aristotle's *Politics*", *Political Theory* 23, n. 4 (1995): 563–584.

⁴⁹The capacity for production of such a family, not just the occasional individual, is what marks a people who are naturally fitted to monarchy, Aristotle tells us earlier in 1288a8–10. Prospects for actually carrying this out, however, even by already existing virtuous rulers, who would presumably have the best idea about how this ought to happen, are not particularly bright, as his discussion of monarchical succession suggests (1286b20–7).

by affectivity is only so in ideal, imagination, or argument. In reality, as I have argued, not only law itself, but also the rule of law, continually intersects with and is imbued with human modalities of affectivity in complicated ways, particularly in terms of the virtues. Rule of law might in certain cases be legitimately supplanted by rule of a person (or family) of superlative virtue, but in order to even deserve that position such a ruler would remain constrained by his or her own virtue (the only manner of genuinely being a law unto oneself), and such a person (or family) would then have the architectonic charge of structuring and overseeing society so as to produce in and for its citizens what genuine rule of law would otherwise do. None of that negates or really qualifies the position on rule of law developed here. Rather, substitution of rule by the superlatively virtuous in place of rule of law mutually supporting (somewhat) virtuous citizens represents another configuration by which human affectivity susceptible by which harmonization with rationality reenters the political sphere from which one mistakenly thought it banished. And, under the assumption that these rulers are genuinely virtuous, it need not be the case, as one commentator laments, “[e]ven men of outstanding virtue are flawed, as it seems, by the malign operation of a passion or complex of passions which acts at the same time as a vital source of support for their virtue.”⁵⁰ Interestingly though, if we do not confine our discussion to faceless, abstract “person(s) of superlative virtue” and we extend our purview to actual politicians and lawmakers Aristotle clearly admired, concrete candidates, at least some of them (particularly Solon and Theramenes) appear to have actually endorsed and strengthened rule of law in certain respects, seeking and producing the common good, encouraging political participation and interaction among citizens rather than simply instating one-man rule, through the exercise of superlative *phronesis* and the other virtues.⁵¹

A fitting end to these reflections on rule of law and the *Politics* Book 3 picture of law as “intellect without desire” or reason without passion is to turn to one aspect of Aristotle’s *Politics* Book 7 counsel to political theorists. Since a political community becoming a good community (*to ... spoudaiaian einai tēn polin*) is a matter both of knowledge (*epistēmēs*, specifically of *hē politikē epistēmē*) and of deliberate choice (*proaireseōs*), not at all of chance, and since this comes about through the citizens who share in it themselves being or becoming good, we need

⁵⁰ Carnes Lord, “Aristotle”, in *History of Political Philosophy*, eds. Leo Strauss and Joseph Cropsey (Chicago: University of Chicago Press, 1987), p. 142.

⁵¹ On Solon, cf. Edward Harris, “Solon and the spirit of the law in archaic and classical Greece”, in *Democracy and the Rule of Law in classical Athens* (Cambridge: Cambridge University Press, 2006), 3–28. On Theramenes cf. in particular von Fritz and Kapp, *loc. cit.*, and Frank, *loc. cit.*

to examine what makes a human being good (*spoudaios*, 1332a32–34). Aristotle’s answer is that “people become good [*agathoi kai spoudaioi*] through three things: nature, habit, and reason” (*logos*, 1332a39–40). Nature’s role is relatively simple: we must be born human beings, with certain moral capacities. And by nature, some things in us are “able to go from one extreme to another” (*epamphoterizonta*), that is, they are alterable “through habits towards the worse [*epi to kheiron*] or the better [*to beltion*].” We also come to possess reason,⁵² through which we can go against habitual structures (*tous ethismous*) and even our nature, if it persuades us that this would be a better thing to do. This is why what is needed is for nature, habit and reason to be in harmony with each other (*sumphōnein allēlois*, 133b5–7), i.e. to be brought and maintained in harmony with each other.

Laws and the rule of law, as indicated earlier, play a significant role in this. To play off Aristotle’s terminology, the institutionalized reason and mind that law is aids human beings towards following and realizing the reason and mind that is “the end of [human] nature” (*tēs phuseōs telos*, 1334b15–6). Considered solely in terms of the laws, this role, while important, would be rather restricted. For as we have seen, rule of law also requires the support of virtuous human beings who are, to be sure, partially shaped by the law, but also shaped by other types or causes of education and transformation of their desires and passions, desire- and passion-bound, and therefore desire- and passion-understanding and shaping, minds. It is possible, Aristotle grants, for even reason to be mistaken (*endekhe ... diēmartēkenai*), by missing the best foundation or principle (*tēs beltistēs hupothesis*), and for it to do this through (bad) habits. For this reason, nature, habit and reason must “harmonize with each other with the best harmony” (*sumphōnein tēn aristēn*, 1334b7–13). Determination of the best, of course, lies ultimately with reason and intellect, but as noted earlier, affectivity becomes intertwined with intellect in action and moral choice, and the measure is not just right reason but also rightly structured affectivity. Law and its rule represent one important aspect or portion of this, one ideally unmarred and unhampered by affectivity, desire, passion. But, as I hope to have demonstrated at least in small part, not only ultimately but also in many determinate ways, equally important, equally necessary for Aristotle is cultivation of what, to play off the famous formulas,

⁵² Aristotle notes that affectivity or desire in the broad sense precedes the development of reasoning (*ho logismos*) and mind (*nous*) in children and adolescents. Specifically what arises first is *epithumia*, *thumos*, but also *boulēsis* (“rational desire” or wish). For this reason, attention (*epimeleia*), must be given to the desire(s) first, before the intellect, but on account of the intellect (*heneka mentoi tou nou tēn tēs orexeōs*, 1334b23–29).

can be called “intellect with desire properly shaped”, or “reason with passion properly educated”.⁵³

BIBLIOGRAPHY

- ACHTENBERG, DEBORAH. *Cognition of Value in Aristotle's Ethics*. Albany: SUNY Press, 2002.
- BARKER, ERNST. *The Political Thought of Plato and Aristotle*. New York: Dover, 1959.
- BATES, CLIFFORD ANGELL. *Aristotle's "Best Regime": Kingship, Democracy, and the Rule of Law*. Baton Rouge: Louisiana State University Press, 2003.
- COBY, PATRICK. “Aristotle's Four Conceptions of Politics”. *The Western Political Quarterly* 39, n. 3 (1986): 480–503.
- COLLINS, SUSAN. “Moral Virtue and the Limits of the Political Community in Aristotle's *Nicomachean Ethics*”. *American Journal of Political Science* 48, n. 1 (2004): 47–61.
- CHAMBERLAIN, CHARLES. “The Meaning of *Prohairesis* in Aristotle's Ethics”. *Transactions of the American Philological Association* 114 (1984): 147–157.
- COOPER, JOHN. “An Aristotelian Theory of the Emotions”. In *Essays on Aristotle's Rhetoric*, edited by Amélie Oksenberg Rorty, 238–257. Berkeley: University of California Press, 1996.
- CURZER, HOWARD J. “Aristotle's Painful Path to Virtue”. *Journal of the History of Philosophy* 40, n. 2 (2002): 141–162.
- DREFCINSKI, SHANE. “Aristotle and the Characteristic Desire of Justice”. *Apeiron* 33, n. 2 (2000): 109–123.
- FORTENBAUGH, W. W. *Aristotle on Emotion*. New York: Harper and Row, 1975.
- FRANK, JILL. “Aristotle on Constitutionalism and the Rule of Law”. *Theoretical Inquiries in Law* 8, n. 1 (2007): 37–50.
- . *A Democracy of Distinction: Aristotle and the Work of Politics*. Chicago: University of Chicago Press, 2005.
- GARRETT, JAN EDWARD. “The Moral Status of ‘the Many’ in Aristotle”, *Journal of the History of Philosophy* 31, n. 2 (1993): 171–189.
- HARRIS, EDWARD M. “Solon and the Spirit of the Law in Archaic and Classical Greece”. In E. M. Harris, *Democracy and the Rule of Law in Classical Athens*, 3–28. Cambridge: Cambridge University Press, 2006, .
- KAIRYS, DAVID. “Searching for the Rule of Law”. *Suffolk University Law Review* 36 (2003): 307–329.

⁵³A much earlier version of this paper was presented at the 2006 meeting of the Association for Political Theory. This paper has benefitted from conversations with Daniel DeLeo, Marco D'Avenia, Andi Sciacca and criticisms provided for an earlier version by an anonymous reviewer of this journal.

- KOSMAN, LESLIE A. "Being Properly Affected: Virtues and Feelings in Aristotle's Ethics", in *Essays on Aristotle's Ethics*, edited by Amélie Oksenberg Rorty, 103–116. Berkeley: University of California Press, 1980.
- KOZIAK, BARBARA. *Retrieving Political Emotion: Thumos, Aristotle and Gender*. University Park, Penn. State University Press, 2000.
- LINDSAY, THOMAS K. "The God-Like Man versus The Best Laws: Politics and Religion in Aristotle's *Politics*". *Review of Politics* 53, n. 3 (1991): 488–509.
- LORD, CARNES. "Aristotle". In *History of Political Philosophy*, edited by Leo Strauss and Joseph Cropsey, 118–154. Chicago: University of Chicago Press, 1987.
- NEWELL, W. R. "Superlative Virtue: The Problem of Monarchy in Aristotle's *Politics*". In *Essays on the Foundations of Aristotelian Political Science*, edited by Carnes Lord and David K. O'Connor, 191–211. Berkeley: University of California Press, 1991.
- OAKESHOTT, MICHAEL. "The Rule of Law". In Michael Oakeshott, *On History: And Other Essays*, 129–170, Indianapolis, IN: Liberty Fund, 1999.
- ROSE, JONATHAN. "The Rule of Law in the Western World: An Overview". *Journal of Social Philosophy* 34, n. 4 (2004): 457–470.
- ROSENFELD, MICHAEL. "The Rule of Law and the Legitimacy of Constitutional Democracy". *Southern California Law Review* 74 (2000): 1307–1309.
- SADLER, GREGORY B. "Aristotle's Psychology, Emotion's Rationality, and Cognition of Being: A Critical Note on Ogren's Position". *Minerva* 11 (2007): 30–53.
- . "Value, Affectivity, and Virtue in Aristotle, Scheler, and Von Hildebrand". In *Phenomenology and Virtue Ethics*, edited by Kevin Hermsberg and Paul Gyllenhammer. London: Bloomsbury, forthcoming.
- SALKEVER, STEVEN. "Aristotle's Social Science". In *Essays on the Foundations of Aristotelian Political Science*, edited by Carnes Lord and David K. O'Connor, 11–48. Berkeley: University of California Press, 1991.
- SHAPIRO, IAN (ed.). *The Rule of Law: Nomos XXXVI*. New York: NYU Press, 1995.
- SHERMAN, NANCY. *The Fabric of Character: Aristotle's Theory of Virtue*. Oxford: Clarendon, 1989.
- SHKLAR, JUDITH. "Political Theory and the Rule of Law". In *The Rule of Law: Ideal or Ideology*, edited by Allan C. Hutchinson and Patrick Monahan. Toronto: Carswell Publishing, 1987.
- SOKOLON, MARLENE. *Political Emotions: Aristotle and the Symphony of Reason and Emotion*. DeKalb, IL: Northern Illinois University Press, 2006.
- STRAUS, BARRY S. "On Aristotle's Critique of Athenian Democracy". In *Essays on the Foundations of Aristotelian Political Science*, edited by Carnes Lord and David K. O'Connor, 212–233. Berkeley: University of California Press, 1991.

- STRIKER, GISELA. "Emotions in Context: Aristotle's Treatment of the Passions in the Rhetoric and His Moral Psychology". In *Essays on Aristotle's Rhetoric*, edited by Amélie Oksenberg Rorty, 286–302. Berkeley: University of California Press, 1996.
- TAMANAH, BRIAN Z. *On the Rule of Law: History, Politics, Theory*. Cambridge: Cambridge University Press, 2004.
- TORKE, JAMES W. "What is This Thing Called the Rule of Law?" *Indiana Law Review* 34, n. 4 (2001): 1445–1456.
- VON FRITZ, K. and E. KAPP. "The Development of Aristotle's Political Philosophy and the Concept of Nature". In *Articles on Aristotle*, edited by Jonathan Barnes, Malcolm Schofield and Richard Sorabji, vol. 2: 113–134. New York: Saint Martin's Press, 1972.
- WALDRON, JEREMY. "The Wisdom of the Multitude: Some Reflections on Book 3, Chapter 11 of Aristotle's *Politics*" *Political Theory* 23, n. 4 (1995): 563–584.
- YACK, BERNARD. *The Problems of a Political Animal*. Berkeley: University of California Press, 1993.



GREGORY B. SADLER teaches for Marist College, is President and Founder of ReasonIO, and has recently published *Reason Fulfilled By Revelation: The 1930s Christian Philosophy Debates in France*. He is currently writing a book on Aristotle and Anger.

E-mail: gbisadler@gmail.com

Address: 51 Glen Street, Kingston, NY, 12401, USA

ABSTRACT

Passages in Aristotle's Politics Book 3 are cited in discussions of the "rule of law", most particularly sections in 1287a where the famous characterization of law as "mind without desire" occurs and in 1286a where Aristotle raises and explores the question whether it is better to be ruled by the best man or the best laws. My paper aims, by exegetically culling out Aristotle's position in the Politics, Nicomachean Ethics and Rhetoric, to argue that his view on the rule of law and its relations to human subjects is considerably more complex and considerably more interesting. Despite Aristotle's dictum, laws are not expressions or institutions of a pure and passionless rationality, and in order to be framed, understood and administered well, one must both have the sort of solid understanding of virtues, vices, passions, and motives of human action that Aristotle's moral philosophy provides and have developed, at least to some degree, certain virtues. My paper focuses particularly on three themes: the role of the passions and desires in judgment, action, virtues and vices; the inescapability of passions and desires in the functioning of law; the possibility for rule of law and a certain level of virtue to be mutually supporting.

SUMMARIUM

Cum de "regno legis" agitur, loci quaedam ex tertio Aristotelis libro Politicorum citari solent, quorum duo sunt notabiles: primo textus col. 1287a (Bekkeri editione) occurrens, ubi lex "intellectus sine appetitu" appellatur, secundo textus col. 1286a inventus, ubi Aristoteles quaestionem movet, utrum melius sit regi ab optimo homine, an optimis legibus. Tractationis propositae scopus est, explicando sententiam Aristotelis in libris Politicorum, Ethicorum Nicom., Rhetoricae expressam arguere, doctrinam suam de legis imperio et relatione ad homines subiectos multo magis complicatam necnon notabilem esse. Dicto eo Aristotelis non obstante, leges non sunt purae rationis, quae est experta passionis, institutiones vel expressiones, immo ut formentur, intelligantur, bene applicentur, duo requiruntur: Primo scil. virtutum, vitiorum, passionum, humanarumque actionum motivorum intellectus accuratus, quem Aristotelis philosophia sua moralis praebet; secundo, virtutes quaedam, saltem aliquantulum excultae. Circa quod tractatio proposita praecipue tria investigat. Primo, passionum appetituumque in iudicio, actione, virtutibus vitiisque partem; secundo, passionum appetituumque in legum operatione praesentiam inevitabilem; ultimo, inter "regnum legis" et virtutem excultam mutui auxilii ferendi possibilitatem.

KEYWORDS: *Aristotle, reason, emotion, desire, political theory, rule of law, education, probairesis, affectivity, virtue*