

Thoughts on Leo Strauss's Interpretation of Aristotle's Natural Right Teaching

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Abstract: The essay discusses the interpretation of Aristotle's natural right teaching by Leo Strauss. This interpretation ought to be seen as the result of an investigation into the history of philosophy and of an attempt to philosophically address political problems. By virtue of this twofold origin, the Straussian commentary is unorthodox: it deviates from traditional Aristotelianism (Aquinas and Averroes) and it seems alien to the text of the *Nicomachean Ethics*. Strauss's criticism of medieval variants results from their incapacity—shared by contemporary political thought—to address a perplexing issue: political exception. He sees in Aristotle's political teaching a way to escape from this failure: the unification, in natural right, of the requirements of statesmanship and ethics. The discovery of this way allowed Strauss to produce an interpretation of natural right that articulates important points pertaining to Aristotelian political science.

The central pages of *Natural Right and History*,¹ Leo Strauss's most famous book, advance an interpretation of Aristotelian natural right (*dikaion phusikon*) that is unique in its unorthodoxy. The interpretation is unorthodox in its deliberate deviation from the most influential natural right teaching inspired by Aristotle, the Thomistic natural right: Strauss emphasizes an irreconcilable divergence between Aristotle and Aquinas concerning a point of paramount importance to all classical natural right doctrines, namely, the simultaneous changeability and unchangeability of its subject matter. Put differently, there is a challenge to the tradition of classic natural right as the authoritative (but not necessarily truthful) interpretation of Aristotle. However, the criticism of Aquinas, which would seemingly pave the way to a strictly exegetical

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I am grateful to three anonymous referees for valuable criticism of the manuscript, and to the editor in chief of the *Review of Politics*, Dr. Catherine Zuckert, for her helpfulness in making the editorial suggestions necessary for publication.

¹Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953). Hereafter NRH.

study of the Aristotelian teaching, culminates in an original natural right teaching with little if any resemblance, at first glance, to the Stagirite's statement on the subject. In other words, Strauss's interpretation seems as removed from Aristotle's purpose as the tradition he disputes.

I contend that this twofold unorthodoxy stems from the fact that the Straussian interpretation of Aristotelian natural right is related to an attempt to solve problems Strauss found in twentieth-century political philosophy. More particularly, his suggestion that there are two aspects of Aristotelian natural right—a stable aspect corresponding to the rules of justice that regulate life in normal circumstances and a mutable aspect that comes out in the rare circumstances of political turmoil—should be understood as a classical response to the insufficiency of Carl Schmitt's treatment of the problem of political exception. I also contend that Strauss's interpretation, its unorthodoxy notwithstanding, is in accordance with Aristotle's fundamental perspective on natural right and things political. This curious predicament in which the distinction between orthodoxy and unorthodoxy becomes blurred will be explained as follows: any truthful interpretation of Aristotelian natural right teaching will be irretrievably unorthodox because the subject of such teaching—political action—is particularly exposed to the variability of circumstances usually highlighted by Aristotelian political science as characteristic of things human. Contemporary political thought, and Carl Schmitt in particular, is aware of the predicament of political action; Strauss realizes, however, that, unlike classic political science, it is not able to deal with radical contingency without degenerating into a defense of unlimited belligerence. His interpretation of natural right,² therefore, augments the tradition of natural right and widens the scope of contemporary political thought.

Deviation from Traditional Interpretations of Aristotle: The Search for the Safe Middle Road between Apolitical Ethics and Belligerent Politics

Two assertions are singled out by Strauss as the starting point of his study of Aristotelian natural right. First, that "natural right is a part of political right"; second, that "all natural right is changeable" (NRH, 157). As regards the first assertion, which corresponds to the text of *Ethica Nicomachea* 1134b18–19 ("of political right part is natural and part is legal"), there is little potential for

²Other studies of Strauss's commentary on Aristotle include William Clare Roberts, "All Natural Right Is Changeable: Aristotelian Natural Right, Prudence, and the Specter of Exceptionalism," *Review of Politics* 74 (2012): 261–83; S. B. Drury, "Leo Strauss' Classic Natural Right Teaching," *Political Theory* 15, no. 3 (1987): 299–315; Stephen B. Smith, *Reading Leo Strauss: Politics, Philosophy, Judaism* (Chicago: University of Chicago Press, 2006), 195–99.

controversy as Strauss suggests nothing besides the correspondence between the hierarchy of the forms of "right" culminating in political right and the hierarchy of the forms of human association culminating in the political association:³ "the most fully developed form of natural right is that which obtains among fellow-citizens" (157). Natural right is hence an aspect of the political right existing "among people whose mutual relations are governed by law" (1134a30).

Considered as part of Strauss's discussion of classic natural right, this statement actually restores the discussion to a safe path: by resettling natural right in political right, Aristotle avoids the disturbing consequences of "Socratic-Platonic natural right" (146–55),⁴ which endangers the political realm by uprooting natural right from the city and substituting the philosopher for the statesman as the man who knows what is simply right. The point of departure for such far-reaching reasoning is the knowledge that laws are often foolish; it follows then that the common opinion according to which "justice consists in giving to everyone what is due to him" (146) must be qualified by appending "according to nature" (147) to its formula. Since the philosopher, unlike the foolish legislator, knows nature, institutions like legal ownership should be set aside for the sake of a just ownership discerned by the philosopher in each particular case (147). The institutional nature of justice becomes eroded to the extent that discerning what is right cannot be distinguished from discerning what is good: "obedience to the law which orders the natural city ... is the same thing as prudence" (150). Politics is absorbed into morals and morals are absorbed into philosophy. Socratic-Platonic natural right manifests the class interest of the philosophers, "being allowed to live the life of the blessed on earth by devoting themselves to investigation of the most important subjects" (143): politics and ethics become part of this investigation, a not particularly great part, since the natural right divined by the wisdom of the philosophers has to be diluted by their coexistence with nonphilosophers in the city-state (152). Aristotle's affirmation of natural right as imbedded in political right is thus a sign of his unrivaled sobriety that Strauss opposes to Plato's divine madness (156).

The main point of Strauss's commentary is Aristotle's second assertion, "an assertion much more surprising than the first" (157); it is a particularly perplexing text, since "the passage is singularly elusive; it is not illumined by a

³See *Politica* 1252b12–1253a4 for the coming into being of the city from the combination of smaller associations. See *Ethica Nicomachea* 1134b8–18 for the "similar" (*homoion*) nature of the just relations between members of the household compared to the fully just relations existing between citizens. Quotations of Aristotle's texts are from the following editions: *Aristotelis Ethica Eudemia*, ed. R. R. Walzer and J. M. Mingay (Oxford: Oxford University Press, 1991); *Aristotelis Ethica Nicomachea*, ed. I. Bywater (Oxford: Oxford University Press, 1894); *Aristotelis Politica*, ed. W. D. Ross (Oxford: Oxford University Press, 1957).

⁴See Roberts, "All Natural Right," 267.

single example of what is by nature right" (156). The origin of the perplexity is the lack of a clear-cut distinction between the changeability of natural right and the changeability of legal right. For Aristotle, legal right (*dikaion nomikon*) is the part of political right "for which, initially, there is no difference whether it is this or that way, but, once it is established, there is, then, a difference" (1134b20–21). The changeability of legal right is the *changeability of legislation*: as regards the conduct of the citizens concerning a multitude of affairs, some fixity must be established, grounded in nothing but the legislative act; and this fixity is bound to be undone provided that the circumstances change and a new legislative act comes into being. The difficulty arises once one attempts to understand the changeability of natural right, since Aristotle attributes stability to it in order to emphasize a *contrast* with the aforementioned flexibility of legal right: "natural [right] is that which has everywhere the same power" (1134b19). This stability is, however, attenuated as a way to explain the variability of law and the things political: "there is something among us which is by nature and, nevertheless, *entirely changeable* [*kinēton mentoi pan*]" (1134b29–30). The outcome is that Aristotle seems to attribute to natural right not only an unchangeability that is absent in legal right, but also a changeability that might be equal to, or even more intense than, the changeability of legal right.

The lack of a precise explanation concerning the changeability of natural right has given rise to a wide range of divergent commentaries. Strauss mentions, as a prelude to his own commentary, the Averroistic and the Thomistic variants. According to the Averroistic view natural right is nothing but "legal natural right," a set of broad rules of justice that comes into being everywhere through ubiquitous *convention*. These broad rules are accepted by almost any status quo the preservation of which depends both on the untrue teaching, imparted in normal political circumstances, that these rules are universally valid, and on the occasional disregard of the same rules in political circumstances that endanger the status quo. Regarding the Thomistic variant, Strauss explains the difference proposed between the universally valid principles of natural right and the changeable specific rules derived thence as a *qualification*, by Aquinas, of the Aristotelian statement on the changeability of all natural right: man is endowed with a habit of practical principles—*synderesis*—which enables him to perceive the unchangeable principles of natural right and to derive thence the changeable specific rules as, for instance, the rule concerning the return of deposits.⁵ In other words, *synderesis* would satisfy the need for an explanation of the changeability of natural right

⁵*Summa Theologiae* I-II, qq. 94 and 95. Quotations of the *Summa Theologiae* taken from *Thomae Aquinatis Opera Omnia, Tomus Septimus: Prima Secundae Summae Theologiae; A Quaestione LXXI ad Quaestionem CXIV* (Romae ex Typographia Polyglotta, 1892). Hereafter ST.

as well as safeguard the unchangeability without which it would be meaningless to speak of natural right.

Strauss criticizes both medieval variants: the Averroistic insofar as the way it admits the changeability of natural right "implies the denial of natural right proper" (159); the Thomistic for introducing a qualification which is nonexistent in the Greek text, since "Aristotle says explicitly that all right—hence also natural right—is changeable; he does not qualify that statement in any way" (158). Both variants fail to avoid what Strauss calls "the Scylla of 'absolutism' and the Charybdis of 'relativism'" (162), a failure that Aristotle escapes by means of a natural right teaching distinguished by "hesitations and ambiguities" (163) absent from both medieval variants. These hesitations and ambiguities are a consequence of the Stagirite's understanding of the considerations of urgency statesmanship imposes on ethics: against the supremacy accorded by Plato to the philosopher in the discernment of what is by nature right, which reflects the classic opinion that the philosophic life is superior to the political life (145), Aristotle preserves "the autonomy of statecraft"⁶ in his treatment of natural right. Strauss summarizes Aristotle's hesitation in a view according to which there is a universally valid hierarchy of ends, but no universally valid set of rules for action (162). In certain political circumstances, thus, the most urgent end, despite occupying a lower position in the hierarchy of ends, is preferred to the absolutely best end. In contrast with Aristotle's subtlety, the Averroistic position, with its use of natural right as a tool for the preservation of the status quo, falls victim to the "Charybdis of relativism": if all right is conventional, then natural right is nothing but a label that does not mean any unchangeable reality behind the changeability of legal right. The Thomistic position, in its turn, with its "definiteness and noble simplicity" (163), that is, its attenuation of the changeability of natural right by means of unchangeable moral laws, falls victim to the "Scylla of absolutism": "the principles of the moral law, especially as formulated in the Second Table of the Decalogue, suffer no exception, unless possibly by divine intervention" (163). Taking for granted "the basic harmony between natural right and civil society" (163), Aquinas would have exceedingly restricted the range of the demands that statesmanship is allowed to impose on ethics. In other words, the Thomistic ethics are apolitical, whereas the Averroistic politics are unethical and thereby restlessly belligerent in its conflicts.

In order to avoid Scylla and Charybdis, Strauss asks: "Can we find a safe middle road between these formidable opponents, Averroës and Thomas?" (159). If such a middle road exists, it shall help the reader of the *Nicomachean Ethics* to avoid the wrong ways of apolitical ethics and belligerent politics. The fact that the great thinkers seem to have gone astray in the

⁶Smith, *Reading Leo Strauss*, 197. This is the point of most of his commentary on Strauss's study of Aristotelian natural right.

attempt to unravel the subtlety behind Aristotle's puzzling text causes Strauss to describe his own attempt to interpret it as an admittedly hazardous enterprise: "one is tempted to make the following suggestion" (159). The starting point of the suggestion is the proposition according to which Aristotle thinks primarily of *concrete decisions* instead of *general propositions* when speaking of natural right. This careful distinction echoes a Straussian contrast between a "natural right doctrine" and a "natural law doctrine." *Lex naturalis*, in Straussian vocabulary,⁷ is a fixed standard against which conduct is evaluated. Aquinas, for instance, defines *lex* as *regula et mensura actuum*—rule and measure of acts.⁸ In the fixity of natural law lies the origin of the medieval interpretation that likens Aristotle's teaching on natural right to his well-known remark that certain actions—such as killing, adultery, or theft—do not admit of any possible appropriate measure.⁹ A representative of this interpretation, Aquinas qualifies the killing of innocents, adultery, and theft as *contra legem naturalem*.¹⁰ Strauss emphasizes that the Latin expression *lex naturalis* had no equivalent in Greek, insofar as *phusis* was understood in contradistinction to *nomos*: "in light of the original meaning of 'nature,' the notion of 'natural law' (*nomos tes physeos*) is a contradiction in terms rather than a matter of course."¹¹ The expression *dikaion phusikon* corresponds to a set of relations among citizens, a phenomenon more fluid than a set of fixed rules; it should therefore be translated as "just by nature" or "natural right."

The justification for focusing on concrete decisions as the primary seat of natural right bears a markedly Aristotelian character: "all action is concerned with particular facts" (159). Strauss singles out a concrete situation the nature of which implies both the fundamental unchangeability and the fundamental changeability of the ground for concrete decisions. This situation is "human conflict": "In every human conflict there exists the possibility of a just decision based on full consideration of the circumstances, a decision demanded by the situation" (159). This statement deserves close attention. The *situation* mentioned by Strauss ought to be understood as the ensemble of peculiar circumstances that determine the gradation of a particular human conflict. The typical situation is that of the conflicts addressed by legal right, the principles thereof being distributive and commutative justice. In these typical conflicts *a full consideration of all the circumstances* is not allowed, since the decision that brings the conflict to an end must be based on the law, a general preexisting standard the fixity of which is the very essence of legal right. In other words, the concrete decision that settles a normal conflict has as its ground the fundamental stability of commutative and distributive justice, i.e., a stable

⁷See Leo Strauss, "On Natural Law," in *Studies in Platonic Political Philosophy* (Chicago: University of Chicago Press, 1983), 137–46.

⁸ST I-II, q. 90, art. 1.

⁹See *Eth. Nic.* 1107a8–17.

¹⁰ST I-II, q. 94, art. 5.

¹¹Leo Strauss, "On Natural Law," 138.

natural right. The citizens know that criteria fixed in laws regulate the distribution of goods as well as the restoration of private damages they may suffer.¹² Nevertheless, the full consideration of the circumstances remains a *possibility* in any conflict. This possibility is actualized when the conflict gains density up to the point that it endangers the possibility of settling typical conflicts in accordance with laws. This conflict is the "extreme situation": "let us call an extreme situation a situation in which the very existence or independence of a society is at stake" (160). Examples of extreme situations are those that lead up to war and espionage against foreign powers, as well as the activities of subversive elements within society. For Strauss these situations bring to light an aspect of natural right that is prior to distributive and commutative justice, i.e., *the common good* (160). In normal conflicts the common good is equivalent to the working of the principles of justice specified in legal right. However, in case of extreme human conflict "the common good ... comprises ... the *mere* existence, the *mere* survival, the *mere* independence of the political community in question" (160). The adjective "mere" is noteworthy insofar as it signs the *momentary* reversal of the hierarchy of ends, putting the lower in rank but more urgent end, public safety, over the better end, the principles of justice, by virtue of statesmanship's demands: "only in such situations, it can justly be said that public safety is the highest law" (160). Such urgency arises as a consequence of the action of those whose inventiveness enables them to transform into an extreme situation a situation which previous experience had taught men to think of as normal: "natural right must be mutable in order to be able to cope with the

¹²Roberts, "All Natural Right," reconstructing Strauss's reading of Aristotle (267–72), suggests that the concrete decisions of natural right constitute an exercise of perfect justice within which each concrete decision would instantiate "What would a perfectly just person do in x (y,z,...) situation?" (267); natural right, according to such a reading, is counterfactual much of the time, since not every concrete decision does instantiate (perfect) justice. Roberts's reading, in which Strauss's essay on Halevi's *Kuzari* plays a large role, seems to me—in part as a consequence of this interpretative choice—to disagree both with Aristotle's understanding of right and with Strauss' interpretation of Aristotle in NRH. According to the *Nicomachean Ethics*, distributive and commutative justice are not principles inductively obtained by generalization from *previous* particular decisions about what is *perfectly just in each circumstance*—distributive and commutative justice are rather instantiated in each city-state by legislation and it is the *content* of the legislation that is, then, applied to particular circumstances by concrete decisions (see 1130b30–1131a9; 1131a25–29; 1131b32–1132a10). Strauss echoes this Aristotelian understanding by affirming that "a law which solves justly a problem peculiar to a given country at a given time may be said to be just to a higher degree than any general rule of natural law which, because of its generality, may prevent a just decision in a given case" (NRH, 159): what he opposes to the general rule of natural law is not a principle obtained from several concrete decisions about what is simply just, but the concrete decisions taken by the legislature (= the adoption of a certain rule) and the judges (= the enforcement of the same rule).

inventiveness of wickedness" (161). It is in the nature of urgency to be as unpredictable as the inventiveness of those who bring it about: "there is no principle which defines clearly in what type of cases the public safety, and in what type of cases the precise rules of justice, have priority" (161). Insofar as natural right contains both the principles of legal right and the concern with public safety, it is both fundamentally stable and fundamentally mutable. On the one side, natural right implies the general and coherent conception of justice behind the particular commands of legal right applied in normal circumstances; on the other side it implies the legally unlimited action needed to face those whose aim is to subvert this very conception of justice.

Once one considers the critical position of the statesman in exceptional circumstances as disclosing a political demand of the utmost ethical relevance, it is not difficult to understand why Strauss remains unsatisfied with the Thomistic teaching. For Aquinas, *lex naturalis* is a participation in the rational creature of the divine providence that governs the totality of the universe.¹³ The rational creature is thereby naturally inclined to the proper acts and ends insofar as his reasoning is based in "principles, naturally imparted to him, that are some general rules and measures of everything done by man."¹⁴ To add some changeability to this indisputably stable foundation for natural law, Aquinas proposes a distinction between "first common principles" (*prima principia communia*), the rectitude of which obtains in all cases, and specific principles which are "conclusions of the common principles" (*conclusiones principiorum communium*), the rectitude of which obtains only "for the most part" (*ut in pluribus*).¹⁵ The occasional failure of the specific principles happens in unusual circumstances that challenge the strict interpretation of a human law (*lex humana*) that is itself shaped on the *conclusiones* of natural law. The exceptionality of these circumstances bears no relation to politics but is closely related to the legal exceptionality known at least since Aristotle as *epieikeia*.¹⁶ *epieikeia* is performed not by the statesman but by the judge, and its exercise is not outside law but rather a sensible enforcement of positive law. Aquinas's favourite example of a mutable conclusion of natural law is "deposits shall be restituted" (*deposita sint reddenda*), which is the foundation of almost ubiquitous rules of private law. The failure of such a conclusion (as well as of the positive law based thereupon) does not affect the everlasting validity of the *primum principium* from whence it is derived, namely "one shall act according to reason" (*secundum rationem agatur*).¹⁷ It is highly significant that the example concerning the restitution of deposits originates in Aquinas's interpretation of Aristotle: it is mentioned

¹³See ST, I-II, q. 91, art. 1 and art. 2.

¹⁴ST I-II, q. 91, art. 3.

¹⁵See ST I-II, q. 94, art. 4 and art. 5.

¹⁶See *Eth. Nic.* 1137a31–1138a3.

¹⁷See, respectively, ST I-II, q. 94, art. 4 and q. 95, art. 2.

as an example of the changeability of natural right in Aquinas's commentary to book V of *Nicomachean Ethics*.¹⁸ In other words, whereas Strauss traces the changeability of natural right to grave political circumstances, Aquinas confines this changeability to the far less hazardous realm of law.

The treatment of the problem of *salus hominum* as part of the discussion of human law reveals the extent to which *lex naturalis* is alien to the problem of political exception. For Aquinas, a law shall not be obeyed if observance of it is harmful to common safety (*communi saluti*).¹⁹ A city under siege cannot abide by a law such as "the doors of the city shall remain closed" in case some citizens making efforts to protect the city in question are being hunted by enemy soldiers: if that happens, it is recommended to act "against the words of the law [*contra verba legis*], so that the common safety be preserved." Although this action takes place outside the scope of laws—"necessity is not subdued to law" (*necessitas non subditur legi*)—it does not necessarily follow a troublesome decision by a prudent statesman: it takes places rather recurrently and is therewith accorded to any man.

The exceptionality of the circumstances that undermine the strict enforcement of the positive laws shaped on the conclusions of the natural laws is not the exceptionality of what Strauss calls "extreme situation": when the public authority decides about these circumstances it does no more than offer a subtler interpretation of legal right. Strauss's extreme situation requires an action beyond legal right *so as to set anew the possibility—suspended for the time being—to act in accordance with legal right*; the political stability necessary for the exercise of legal right either no longer exists or is on the verge of being destroyed. In the striking opposition between the existence and the absence of political stability lies the origin of a natural right that is both unchangeable and changeable. Unchangeable natural right is the fixed set of principles of justice according to which the rules of legal right are framed in all situations of political stability. These principles of justice are part of the larger edifice constituted by the hierarchy of ends desired by any good man. Strauss's interpretation seems thus to suppose that the hierarchy of ends (and, consequently, natural right) is unchangeable because there is an unchangeable model of the good man: it is the man described by Aristotle in his ethical treatises. Once the political stability vanishes it becomes necessary to do *anything* to regain it, otherwise the life of the good man as described in these treatises cannot come into being. The indeterminacy of the word "anything" reveals the changeability that natural right acquires in case of extreme political turmoil. However, the changeability of natural right cannot be divorced from its unchangeability: the highly indeterminate range of actions that the

¹⁸Aquinas, *Sententia quinti libri Ethicorum*, XII.187–96. Quoted from *Sancti Thomae de Aquino Opera Omnia, Iussu Leonis XIII PM edita, Tomus XLVII, Sententia Libri Ethicorum, volumen II, libri IV–X* (Romae ad Sanctae Sabinae, 1969).

¹⁹ST I-II, q. 96, art. 6.

chaotic political circumstances might require on the part of the statesman is therefore limited by the fixed aim that is the life of the good man. In other words, any step involving a reversal of the hierarchy of ends can only be justified by an attempt to restore the very same hierarchy. Hence one is allowed to affirm that the changeable natural right is natural right only insofar as it contains in itself a reference to unchangeable natural right. The fact that the reversal of the hierarchy happens for the sake of the hierarchy itself allows Strauss to differentiate his position from the Machiavellianism of the Averroists. Machiavelli takes his bearings by the extreme situation within which the considerations of urgency are paramount and, therefore, "he does not have to overcome the reluctance as regards the deviations from what is normally right" (162). The Aristotelian(-Straussian) statesman, in his turn, as he takes his bearings by the hierarchy of ends, "reluctantly deviates from what is normally right"²⁰ (162) when faced with the extreme situation. The statesman, as a prudent man, shall experience this decision as critical, as a decision that constitutes a particularly extreme example of the contingency of moral action: it is an action that his previous experience would indicate to be repellent.

In Strauss's presentation of classic natural right, Aristotle seems indeed to set classic natural right on the right track by refusing to follow Plato in substituting the philosopher for the statesman as the main human figure concerned with it. Classical philosophy both erected its natural right doctrine and criticized hedonist conventionalism, by tracing human pleasures to the satisfaction of natural wants and placing these, in their turn, in the order of human soul (126–27). Thereby, a view came into being according to which "the proper work of man consists in living thoughtfully, in understanding and in thoughtful action" (127). Speculation or "understanding" does not simply overtake action but is rather coordinated with it in the hierarchy of the ends or goals of a good human life. In other words, Aristotle does not

²⁰In view of this remark, the opinion expressed by Drury, "Leo Strauss' Classic Natural Right Teaching," concerning Strauss's reading of classic natural right—"It seems to me that this way of speaking allows us to do injustice with a clear conscience" (308)—is not tenable. Drury's failure in observing the *reluctance* of the statesman who takes the unusual action needed to face the extreme situation is a consequence of a mistaken notion that the urgency of this situation implies that it is a *recurrent* phenomenon: "Natural Right provides man not with principles of conduct, but with a hierarchy of ends. Peace, stability and preservation of the city are lower than justice. . . . Strauss indicates that the lowest, being the most urgent, *frequently* takes precedence over the higher" (307). In opposing the extreme situation to the *normal* situation—the *usual* circumstances in which natural right corresponds to action according to law—Strauss points very clearly to the exceptionality of the extreme situation: "By saying that in extreme situations the public safety is the highest law, one implies that the public safety is not the highest law in normal situations; in normal situations the highest laws are the common rules of justice" (NRH, 161).

allow the class interest of the philosophers to uproot natural right from the political life: "the classic natural right doctrine in its original form, if fully developed, is identical with the doctrine of the best regime" (144). The regime (*politeia*) is the society in which men must live in order to reach human excellence by sharing in a certain way of life (135–37). The statesman appears thus as "the full actualization of humanity" (133) insofar as his activity concerns not only his perfection as an individual but also the perfection of a human community (133); the statesman concerns himself with *politeia*—the way of life of the city—and the extreme situation may require him to take an action that seems incompatible with it.

Remote Origin of the Unorthodoxy Regarding Aristotelian Natural Right: Strauss's Criticism of Carl Schmitt's Strictly Existential Defense of Politics

I contend that the unique interpretation of Aristotelian natural right we find in Strauss's mature thought is the culmination of concerns and perplexities that moved the young Strauss: Aristotle's political philosophy proved able to shed light on issues discussed but left unsolved by contemporary German political thought. It is noteworthy that *Natural Right and History* starts by contrasting the American Constitution and way of life with the predicament of "a nation, defeated on the battlefield and, as it were, annihilated as a political being" (2). The unnamed nation is Nazi Germany. The Nazi regime fits perfectly Strauss's description of the unscrupulous war enemy that fosters political chaos²¹ and thereby forces a decent nation to take actions hitherto unseen in order to preserve its own existence. According to the text, however, the most important opponent to the American way of life is actually a way of life that preexisted the Nazi regime, distinguished by the abandonment of natural right and the embracing of relativism (1–2): it is against a background of growing influence of German historicism and relativist social science that Strauss defends the study of natural right. Yet his commentary on Aristotle's natural right teaching is strikingly similar to the treatment of a favorite subject by a specific prewar German author that is not mentioned in *Natural Right and History*. The author is the jurist Carl Schmitt and the subject is "the state of exception" (*Ausnahmezustand*).²²

²¹For an argument that making the lawless exception a permanent political condition is the hallmark of totalitarianism, see the chapter "Totalitarianism in Power" in Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, Brace, 1951), 376–428.

²²Michael Zuckert and Catherine Zuckert, *Leo Strauss and the Problem of Political Philosophy* (Chicago: University of Chicago Press, 2013), 217–32, in emphasizing the fundamental differences between Strauss and Schmitt, take care to highlight

Schmitt was not unknown to Strauss: his famous *Der Begriff des Politischen* was the subject of an important commentary by the young Strauss.²³

Schmitt defines the state of exception as the event that reveals the limits of legal thought. He criticizes legal normativism for being unable to grasp norms as *part* of legal order instead of legal order *as a whole*.²⁴ The state of exception is the circumstance within which law can no longer be enforced and public order must be preserved from the chaos that would result from the dissolution of the state. Such a time of crisis when the normativity of justice in daily life becomes less important than securing the existence of the organized community (so that it becomes once more possible to rule it through norms) is described by both authors in similar terms:

Since the *state of exception* is still something different from anarchy and chaos, an order remains in juridical sense, even though not a legal order. *The existence of the state retains an undoubted superiority over the validity of the legal norm.* (Weil der Ausnahmezustand immer noch etwas anderes ist als eine Anarchie und ein Chaos, besteht im juristischen Sinne immer noch eine Ordnung, wenn auch keine Rechtsordnung. Die Existenz des Staates bewährt hier eine zweifellose Überlegenheit über die Geltung der Rechtsnorm.)²⁵

Let us call an *extreme situation* a situation in which *the very existence* or independence of a society is at stake.... In extreme situations there may be *conflicts between what the self-preservation of society requires and the requirements of commutative and distributive justice.* In such situations, and *only in such situations*, it can justly be said that *the public safety is the highest law.* (NRH, 160)

We can observe here a common concern of Schmitt and Strauss: the existence of a critical situation in which the preservation of the political community requires unusual action, namely, action outside the scope of legal regulation. Let us call it the problem of political exception. Whereas Schmitt, the jurist, treats this problem as a topic of legal theory, "the state of exception," Strauss, the political philosopher, treats it as a very demanding case of classic natural right, thereby calling it an "extreme situation." The fact that Strauss did not

Strauss's discussion of Aristotelian natural right as most resembling the German jurist's concerns.

²³Carl Schmitt, *Der Begriff des Politischen, Text von 1932 mit einem Vorwort und drei Corollarien* (Berlin: Duncker & Humblot, 1963), hereafter DBP; Leo Strauss, "Anmerkungen zu Carl Schmitt, *Der Begriff des Politischen*," *Archiv für Sozialwissenschaft und Sozialpolitik* 67 (1932): 732–49.

²⁴Carl Schmitt, *Über die drei Arten des rechtswissenschaftlichen Denkens* (Berlin: Duncker & Humblot, 1934), 10–20.

²⁵Carl Schmitt, *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität* (Berlin: Duncker & Humblot, 1922), 18. Hereafter PT.

write specifically on Schmitt's treatment of the state of exception later cannot be taken as proof that the writings of the jurist had no influence on the philosopher.²⁶ Strauss certainly knew *Politische Theologie*, the main text of Schmitt that treats the state of exception: he quotes this text in page 748 of his review of *Der Begriff des Politischen*.

Because the public order presupposed by the normal working of the courts of law has deteriorated, a definitive feature of the state of exception is that it can neither be ascertained nor be dealt with through the reasoning typical of legal subsumption. Strauss makes this point more directly and less technically than Schmitt:

It is neither possible to determine with the clarity of subsumption whether it is a case of urgency, nor is it possible to enumerate what can happen in such case, if it is really a matter of the extreme urgency and its eradication. (Es kann weder mit subsumierbarer Klarheit angegeben werden, wann ein Notfall vorliegt, noch kann inhaltlich aufgezählt werden, was in einem solchen Fall geschehen darf, wenn es sich wirklich um den extremen Notfall und um seine Beseitigung handelt.) (PT, 14)

And there is no principle which defines clearly in what type of cases the public safety, and in what type of cases the precise rules of justice, have priority. (NRH, 161)

There are no limits which can be defined in advance, there are no assignable limits to what might become just reprisals. (NRH, 160)

Strauss and Schmitt also agree that action in exceptional situations, since it cannot be normatively conceived, cannot be according to law, but must be the decision of a statesman. Schmitt calls him "sovereign," whereas Strauss identifies him with the *politikos* of classical philosophy:

The constitution can at the most determine who is allowed to act in such case. This action being submitted to no control ... it is thus clear who is the Sovereign. He decides about the occurrence of a case of urgency, as well as about what shall be done to eradicate it. (Die Verfassung kann höchstens angeben, wer in einem solchen Falle handeln darf. Ist dieses Handeln keiner Kontrolle unterworfen ... so ist ohne weiteres klar, wer der Souverän ist. Er entscheidet sowohl darüber, ob der extreme Notfall vorliegt, als auch darüber, was geschehen soll, um ihn zu beseitigen.) (PT, 14)

What cannot be decided in advance by universal rules, what can be decided in the critical moment by the most competent and most conscientious statesman on the spot... (NRH, 161)

²⁶Strauss suggests, for example, the influence of Aristotle's morals on Hobbes's political philosophy by pointing out important textual similarities between Aristotle's *Rhetoric* and Hobbes's writings. See Leo Strauss, *The Political Philosophy of Hobbes: Its Basis and Its Genesis*, trans. Elsa M. Sinclair (Chicago: University of Chicago Press, 1952), 30–43.

Both authors take care to affirm the superiority of regulation through rules during normal circumstances. They emphasize that action in exceptional circumstances must be aimed at reinstating the condition of normality:

The *exceptional case* has come into being in its absolute form *when it is necessary to foster that situation within which legal norms can be valid*. Every general norm requires a normal configuration of circumstances, a configuration the facts of which will be subjected to the application of the norm and which it subdues to its normative regulation. ... There is no norm that could be enforced in chaos. (In seiner absoluten Gestalt ist der Ausnahmefall dann eingetreten, wenn erst die Situation geschaffen werden muß, in der Rechtssätze gelten können. Jede generelle Norm verlangt eine normale Gestaltung der Lebensverhältnisse, auf welche sie tatbestandsmäßig Anwendung finden soll und die sie ihrer normativen Regelung unterwirft. ... Es gibt keine Norm, die auf ein Chaos anwendbar wäre.) (PT, 19)

The true statesman in the Aristotelian sense ... *takes his bearings by the normal situation and by what is normally right, and he reluctantly deviates from what is normally right only in order to save the cause of justice*. (NRH, 162)

By saying that in extreme situations the public safety is the highest law, one implies that *the public safety is not the highest law in normal situations; in normal situations the highest laws are the common rules of justice*. (NRH, 161)

The parallel between Schmitt's contrast of the normal to the exceptional case and Strauss's opposition of the unchangeable to the changeable aspects of Aristotelian natural right prompts one to affirm Strauss's admiration for Schmitt's interest in the subject of exception. However, the fact that Strauss locates the opposition in Aristotle shows that he was not satisfied with Schmitt's teaching. There is an ascent from Schmitt towards Aristotle in Strauss's understanding of the problem of political exception. In order to grasp this ascent in detail one must turn to Strauss's review of *Der Begriff des Politischen*. Most of the review is devoted to Strauss's criticism of Schmitt for his insufficient treatment of *the fundamental philosophical teaching that accounts for the political exception*. Strauss observes that Schmitt treats "the political" (*das Politische*) as a domain that cannot be reduced to the moral, economic, or any other domain of things human: his teaching is opposed to "liberalism," the teaching that denies the autonomy of the political as a domain and is thereby unable to understand situations such as the state of exception.²⁷ Since the state of exception is distinguished by the fact that "the state remains whereas law withdraws," and "the concept of State presupposes the concept of the political," understanding the state of exception presupposes understanding the political.²⁸ According to Schmitt, the political domain is defined by the distinction between friend and enemy.²⁹ The

²⁷DBP, 68–78; PT, 18–20.

²⁸PT, 18; DBP, 19.

²⁹DBP, 25.

irreducibility of the political to other domains of things human is a consequence of the irreducibility of this fundamental distinction to the other domains of things human: it cannot be deduced from any criteria pertaining to another domain. Politically, the enemy is the public enemy; he is neither the target of feelings such as hate nor the target of unfavorable moral judgment.³⁰ The nature of both friend and enemy implies nothing but association and dissociation in the highest degree possible: the enemy "is something existentially other and foreign."³¹ The state of exception comes into being precisely when association and dissociation of this sort are at stake. Strauss criticizes Schmitt for not developing his criticism of liberalism to the point at which an encompassing philosophical view is elaborated in opposition to liberalism.

In particular, Strauss criticizes Schmitt for not developing the insight contained in his own claim that the distinction between friend and enemy characteristic of the political is "not corresponding and analogous to any other distinctions."³² This theoretical development should culminate in the view that the political is *fundamental* to the other domains because "the affirmation of the political is the affirmation of the dangerousness of man," and this dangerousness must be understood to be an unchangeable human trait: "the thesis of the dangerousness of man is therefore the ultimate presupposition of the position of the political."³³ According to Strauss, the incompleteness of Schmitt's teaching³⁴ concerning the political is revealed by Schmitt's foreseeing the possibility of a world wherein war has disappeared.³⁵ In that case, man would become an inoffensive being and the political domain would become superfluous: "so far the dangerousness of man stands fast, so far stands fast the necessity of the political."³⁶ Since Schmitt loathes the war-free world without holding therewith pacifist apologetics to be a chimera, his defense of the political against such views turns out to be a *moral* affirmation of human dangerousness, i.e., the desire to have dangerous

³⁰DBP, 27–28.

³¹DBP, 26.

³²See DBP, 25 and Strauss, *Anmerkungen*, 734.

³³Strauss, *Anmerkungen*, 742, 741.

³⁴In his thorough study of the Strauss-Schmitt debate, Heinrich Meier shows that the changes Schmitt made in the different editions of DBP were intended to complete Schmitt's teaching by pointing out the fundamental nature of the political domain and thus meet Strauss's criticism. In the version commented upon by Strauss, the political is presented as one of the "different and relatively independent [*relative selbstständigen*] domains of human thought and action," whereas the 1933 edition describes the political as "independent" (*selbstständig*) and its founding distinction between friend and enemy as a "far deeper distinction." See Heinrich Meier, *Carl Schmitt, Leo Strauss und "Der Begriff des Politischen": Zu einem Dialog unter Abwesenden*, expanded ed. (Stuttgart: Metzler, 1998), 20–25.

³⁵Strauss, *Anmerkungen*, 740–42.

³⁶*Ibid.*, 741.

enemies.³⁷ Given the absence of a comprehensive theory on the nature of man as ineluctably dangerous in Schmitt's reflections, Strauss concludes that the development of Schmitt's affirmation of the political against liberalism would culminate in a philosophy of belligerent nationalism. His affirmation of the political constitutes praise of the desire to fight on the basis of any serious conviction:³⁸ "it becomes clear why Schmitt rejects the ideal of pacifism (more fundamentally: of civilization), why he affirms the political: he affirms the political because in the threat to it he sees the serious in human life threatened."³⁹ Strauss uses Schmitt's own words to describe his opposition to liberalism as having "no normative meaning, but rather only an existential meaning";⁴⁰ Strauss calls this agonistic position "a liberalism with inverted signs."⁴¹

According to Strauss, Schmitt's affirmation of the political is nothing but "the affirmation of force as state-building force, of *virtù* in Machiavelli's sense."⁴² The young Strauss thus found in Schmitt the same predicament the mature Strauss found in his study of Machiavelli and the Averroists: the denial of natural right. This common predicament can be described as follows: both Schmitt's conception of the opposition between friend and enemy as strictly existential and the Averroists' denial of any immutable social rule are based on a recognition of the primacy of the use of force in establishing and maintaining any political order regardless of its attributes. The Averroist position differs from Schmitt's position insofar as it is a philosophical teaching, that is, a complete teaching. It cannot be corrected, therefore, simply by making the teaching more complete. Schmitt's refusal to elaborate a philosophical teaching opposed to liberalism gives his remarks on political exception a preliminary character. His affirmation of the political "can only prepare the radical criticism of liberalism."⁴³ The result of this criticism is so uncertain that the young Strauss asserts that it is a predicament that "has no name so far."⁴⁴ The mature Strauss is no longer uncertain: the predicament that results from the criticism of liberalism is the recovery of classic natural right teaching. This recovery allows Strauss to join Schmitt in the defense of the serious in human life. The defense, however, is not merely existential, but acquires a normative quality: instead of simply affirming the political, Strauss urges us to study *politeia*, that is, to search for the best way of life. It is necessary to ask *why* the friend is friend and *why* the enemy is enemy. As Schmitt imputes to liberal pacifism the oblivion of the political

³⁷Ibid., 742.

³⁸Ibid., 748.

³⁹Ibid., 745.

⁴⁰See DBP, 49 and *Anmerkungen*, 742.

⁴¹Strauss, *Anmerkungen*, 748.

⁴²Ibid., 742.

⁴³Ibid., 748.

⁴⁴Ibid., 749.

(*Entpolitisierung*),⁴⁵ so Strauss imputes to liberal pacifism the oblivion of *politeia* by contemporary social science: "We are in the habit of speaking of 'civilizations,' where the classics spoke of 'regimes.'" Oblivion of *politeia* in favor of civilization or culture betrays a refusal to examine human conflicts by tracing them back to their causes: "societies do not go to war with one another on account of differences of artistic styles." Societies go to war on account of differences regarding their way of life. Oblivion of *politeia* is thus oblivion of the seriousness in human life: "our orientation by civilizations, instead of by regimes, would seem to be due to a peculiar estrangement from those life-and-death issues which move and animate societies and keep them together" (NRH, 138). This most Schmittian sentence of *Natural Right and History* unveils the precise character of the incompleteness of Schmitt's teaching: the full realization of a serious view regarding human conflict is normative political science.

How the Unorthodoxy Concerning Natural Right Paradoxically Leads to a Promising Portrait of Orthodox Aristotelian Political Science

The development of a normative political science presupposes that the thinker speaks on topics about which Schmitt remains silent. The ensemble constituted by these topics is called the "order of things human" (*Ordnung der menschlichen Dinge*).⁴⁶ Aristotle does not remain silent on the order of things human; he makes it the object of his political science. For the sake of precision, it ought to be said that an encompassing ordering of the ensemble of things human is the work of the Aristotelian political science. The outcome of this ordering task is the human good, *t'anthrōpinon agathon* (*Eth. Nic.* 1094b7). The accomplishment of an encompassing order is precisely what is meant by the qualification of political science as regards the other remaining sciences: the political science is *architektonikē* (1097a27), it has the architecture of the human good as its object (1152b1–3). The end of political science (the accomplishment of human good) includes the ends of all other sciences and capacities (that is, all goods human). Therefore, the political scientist makes use of the most highly esteemed human capacities in order to obtain the human good by ordering all goods human (1094b2–7): the political scientist must be wise. Political science is thus a practical science the full accomplishment of which goes beyond theory: politics involves also a *dunamis*, a capacity (1094a26). As the architectonic human capacity exercised under the guidance of the architectonic science, politics is the task of the statesman, the agent responsible for bringing about the human good. The statesman must therefore

⁴⁵DBP, 63–72; DZNE, 73–87.

⁴⁶See DBP, 87 (DZNE) and Strauss, *Anmerkungen*, 749.

become a political scientist, that is, he must strive to know what is the best order of the things human. Put differently: the philosopher does not substitute for the statesman as the agent who brings about human good; the statesman develops an interest in philosophy out of his own concerns as a prudent man. The statesman must strive for a wisdom that Schmitt cannot yield to him, the wisdom of Aristotle.

By mentioning the statesman, we return to the core of Strauss's commentary on Aristotle's natural right teaching. The statesman who is able to make a critical decision in the face of political exception must possess the knowledge demanded of the Aristotelian statesman: his action must be based on the "universally valid hierarchy of ends" (NRH, 162), the Straussian equivalent to Schmitt's *Ordnung der menschlichen Dinge* and Aristotle's *t'anthrōpinon agathon*. Therefore, the question inevitably arises regarding the exact relation between Aristotelian political science and Aristotelian natural right. In other words, how does the knowledge of the human good possessed by the statesman pertain to his action in the extreme situation? In the attempt to answer this question one encounters an unresolved obscurity regarding the object of Aristotelian political science: the human good "is the same for the singular man and for the city" (1094b7–8). The human good for the individual is *eudaimonia*, the best life available for man. The first book of the *Nicomachean Ethics* does not mention what is the human good for the city; according to the first book of the *Eudemian Ethics* (1216b16–19) the good for the city seems to be *eunomia*, the good ordering of the city by means of its laws. There is no clear explanation in the extant texts of the Aristotelian corpus of how the best life available for man and the good ordering of the city are the same. Such an explanation would clarify the precise relation between the object studied by the two *Ethics* (the best life available for man) and the object studied by the *Politics* (the good order of the different cities), that is, it would point out clearly how the domain we (but not Aristotle) call "moral philosophy" and the domain we (but not Aristotle) call "political philosophy" are united in one single science. What Strauss calls the mutable natural right concerns mostly the good for the city whereas what he calls the immutable natural right concerns mostly the good for man: this distinction agrees with the undisputable fact that the best life available for man is always the same (i.e., the best life as presented in the *Nicomachean* as well as in the *Eudemian Ethics*) whereas the good ordering (= the good institutions) differs as the kinds of city differ (*Pol.* 1296b10–12). The core of the difficulty regarding the position of the statesman vis-à-vis the extreme political situation stems from the fact that in his position the two aspects of human good unite: he acts for the sake of the good of the city and does so as a singular man aspiring to the condition of *eudaimōn*. In other words, his action, taken under particularly unfavorable circumstances, ought to fit in the hierarchy of ends that constitutes the statesman's life. Insofar as a clear explanation regarding the unity of Aristotelian political science is necessary to explain Aristotelian natural right as it is interpreted

by Strauss, Strauss's interpretation of Aristotelian natural right can also be seen as an attempt to articulate the unity of Aristotelian political science.

Nevertheless, once the Straussian interpretation of Aristotelian natural right is conceived as an effort to pave the way to the understanding of Aristotelian political science as a whole, a significant difficulty arises concerning precisely the unity of political science. This difficulty can be summarized as follows: If mutable natural right is natural right only to the extent that it contains in itself a reference to immutable natural right (a condition we suggested earlier to be indispensable in order to differentiate Aristotelianism from Averroism-Machiavellianism), the unity of Aristotelian political science is obtained by subjecting politics to morals. In other words, the good ordering of the city or the proper functioning of the institutions that the statesman seeks either to maintain or to restore in face of an extreme situation is subjected to the unvarying pattern provided by the life of the good man. Hence Strauss would fall victim to the same mistake he imputes to Schmitt: instead of subjecting politics to belligerent morality he would subject it to the morality of classical philosophy, that is, politics would not be fundamental in the Straussian unification of Aristotelian political science. But politics is fundamental for Aristotle: the architectonic science, the science that studies the human good or the complete hierarchy of goods human, is not called moral science but political science. Given the undisputable supremacy accorded to the life of the good man as the cornerstone of immutable natural right for the sake of which the statesman's action as the utmost example of mutable natural right is exercised, how is it possible that politics be fundamental? The way to solving this Straussian-Aristotelian dilemma can be stated as follows. The fundamental nature of politics in the constitution of a unified political science must be consistent with the paradigmatic nature of morals therein. The outcome of the solution—which might seem as hopeless as squaring the circle—is an understanding of political science according to which morals are taken as paradigmatic without politics being subjected to it.

A good prospect for solving the dilemma comes to sight if we turn our eyes to the action of the statesman in the extreme situation. The momentary reversal of the hierarchy of ends this action entails is justified by the urgency of the circumstances. The fundamental nature of politics might be thus recognized in what makes this circumstance urgent, i.e., in the very need to keep the order in the city: urgency sheds light on "the mere existence, the mere survival, the mere independence of the political community" (NRH, 160) as the elementary condition for morals. In this sense, politics can be deemed to be fundamental insofar as it sets the foundation that makes morals possible: once the inventiveness of evil triumphs in laying waste the institutions of the city, the life of the good man is no longer possible because he is thereby deprived of the circumstances favoring virtuous actions. The virtuous life, in its turn, insofar as it is the summit of the hierarchy of ends that makes up human life and justifies thereby the critical decision of the statesman to

disregard the very same hierarchy in the exceptional circumstance, can be said to work as an unvarying standard in politics. This formulation, however, is not enough to sustain the fundamental character of politics in Aristotle's political science. It seems to suggest that the action of the statesman in the face of political exception is nothing but a means to the virtuous life; politics, therefore, can still be said to be the maidservant of morals.

The fundamental nature of politics regarding morals cannot be ascertained unless the very point where politics and morals meet is itself ascertained. That is, for politics to be fundamental and yet to take morals as paradigm there must be *a political action that is itself the summit of moral action*: politics is fundamental insofar as it is itself the fullest realization of virtue of character. In light of the two aspects of the human good proposed by Aristotelian political science, this coincidence between politics and morals might be formulated as the coincidence between institutional functioning and virtuous action. We have seen that for Strauss statesmanship, as the care for the moral perfection of a community, requires a higher degree of virtue than the individual's care for his own moral perfection. By the same token, the statesman's action in the extreme situation, an action addressed to the preservation of the city, is arguably the most extreme example of care for the moral perfection of a community. The action of the statesman in the extreme situation requires therefore the highest degree of virtue of character. We might thus be confronted with the paradox that an action concerned with the mere existence of the city is the most exalted and majestic action, i.e., the brightest example of the perfect virtue the Greeks called *kalokagathia*. In other words, to ascertain the nature of politics as fundamental regarding morals one shall turn not so much to the statesman's action but rather *to the statesman's character*, to the virtuous disposition the actualization of which is the very action taken by the statesman in exceptional political circumstances. The relation between *kalokagathia*, the ensemble of the most important virtues of character possessed in the most perfect way,⁴⁷ and natural right seems however somewhat vague. Fortunately, the *corpus aristotelicum* points to a way to reach a neat understanding of the relation between *kalokagathia* and natural right: the solution is in the first chapter of *Nicomachean Ethics* book V, dedicated to the disposition of character traditionally rendered as "general justice."

General justice, as the virtue concerned with *ta nomima*, that is, with the actions pursued in accordance with legal rules (*Eth. Nic.* 1129b11–14), is thereby concerned with the actions of all virtues, since legislation addresses all the actions deemed good by the city (1129b19–25; 1094b5–6). Like political science, general justice is related to the whole human good: justice is an "architectonic virtue." One can say that understanding the unity of Aristotelian political science requires understanding general justice: by means of its commands—the obedience thereto being the actualization of general justice—good

⁴⁷See *Eth. Eud.* 1248b8–1249b25 for the treatment of *kalokagathia*.

legislation not only manifests the best life available for man but addresses as well the good of the city; in other words, in legislation the two aspects of the human good are unified. By the same token, besides *kalokagathia* justice is the only virtue called a "perfect virtue" (1129b26)—a perfect virtue "regarding someone else" (*pros heteron*) (1129b27), a qualification that indicates its bearing on the good of the city. According to Aristotle, acting virtuously with regard to other people is more difficult than acting virtuously with regard to oneself or to one's friends (1129b31–1130a1), and it is a distinguishing mark of justice that it seems even to be the only virtue concerned rather with "that which is good for others" (*allogrion agathon*) than with one's own good (1130a3–5). In the exercise of justice, the man endowed with *kalokagathia* would therefore fully display his care for other people.

General justice is thus a most becoming virtue for statesmen: "the exercise of public office will unveil [who] a man [is]" (*archē andra deixei*) (1130a1–2). Such a remark means, among other things, that a man will prove his good character in a particularly persuasive manner if he abides by the laws when endowed with the power inherent in political office. Two points can be made, however, to suggest a more nuanced interpretation of the relation between the exercise of public office and virtue. First, it is beyond doubt a trait of Aristotelian ethics that virtuous actions happen in a landscape vastly influenced by contingency and, therefore, none of the treatises on the best life available for man proposes a codification of this life by means of directives for action. By the same token, the exercise of moral virtues shall be accompanied by the exercise of *phronēsis*, the ability that enables the virtuous man to find out the best course of action in each particular circumstance. The commands contained in the legal rules are, nevertheless, directives for action. One could thus deem general justice to be an exception to the overall embedding of virtues in contingency: the directives of the rules ought to be obeyed even if the action commanded is not the best of all, for example, if the prudent man is able to devise a better course of action; otherwise the choice of the best course of action against the legal commands would generate social chaos and it would be thereby as bad as the choice of vicious actions. The exceptional nature of justice as a virtue can be rephrased in the following way: justice demands of the prudent man that he often restrains from fully exercising his abilities. Justice is not, however, entirely an exception, which is demonstrated by the example of *epieikeia*, the very occasional disregard of legal commands: the exercise of justice is once in a while open to the influence of contingency that is typical of all other virtues. We must conclude, therefore, that an occasional refusal to follow strictly a legal command may reveal the virtue of a public officer. The second point to be made about the relation of public office to virtue concerns the definition of the just action. The *nomima* are directly related by the text of book V to the architectonic task of the legislator in addressing all the good actions every citizen ought to exercise as well as in doing so "for the sake of the common benefit" (*tou koinē sympherontos*) (1029b15). Concern with the common benefit of men is precisely what shapes the singular way justice, among other virtues, relates to

contingency: it is for the sake of the common benefit that people ought usually to abide strictly by legal rules, even if the prudence attached to their good character enables them to envisage in each circumstance a more noble course of action than the one commanded by a certain rule; it is also for the sake of the common benefit that a judge occasionally refrains from interpreting strictly the very same rules—the exercise of *epieikeia* is a “correction of the just as written in law” (1137b12–13). Concern with the common benefit of men is thus a distinctively protective task by means of which a more precise definition of the just action obtains: beyond the simple and normally effective obedience to legal commands, the just actions are actually all those actions “productive and protective of *eudaimonia* and its parts for the political community” (1029b17–19). The more nuanced interpretation of Aristotle’s remark on the relation between public office and virtue can be summarized as follows: occasional disregard of a rule may reveal the rare virtue of a public officer working to protect the common benefit of men in a critical situation. There is no action more protective of *eudaimonia* than the action Strauss attributes to the statesman acting to preserve the city during an extreme political situation: it is thus the most just action available to a man, the most exalted instance of the exercise of perfect virtue regarding others. The need for a statesman to take such an action is the most extreme example of the openness of justice to the influence of contingency. To realize how far this influence goes, it is enough to remember that the course of action chosen by the statesman may be externally identical to the course of action chosen by the people whose baseness required the statesman to take this extreme reaction. Strauss calls the ability of these people deliberately to challenge the virtuous life the “inventiveness of wickedness” (NRH, 161). Put differently, the extreme situation is a critical moral eventuality because in its circumstances the very same course of action actualizes the most perfect virtue as well as the most ignoble vice: injustice as the disposition of character to act for the sake of lawlessness or against the common benefit of men.

The overwhelming contingency enclosing the just action of the statesman in the extreme situation brings out the extent to which his capacity as a *phronimos* is required therein: no other circumstance is bound to test so thoroughly the human ability to cope with everything that “may be otherwise” (*endechnontai allōs echein*) (1140a34). Contrary to the strict wording of *Natural Right and History*, this action might appear to the prudent statesman not as a momentary reversal but rather as the utmost affirmation of the fixed hierarchy of ends. One might wonder why Strauss does not suggest this possibility. The reason might be that his text is concerned mostly with justice, the virtue distinguished by its attachment to preexisting directives for action (the legal rules) and thereby the only virtue about which it makes sense to speak of “exceptions” and “reversals”; or it might be ill-considered to state outright that which, if it is true, the prudent man would discern for himself in the extreme situation, whereas such truth could only corrupt the mass of nonprudent men. Strauss chooses to mirror Aristotle’s hesitation.

In view of the difficulty both in evaluating persuasively the statesman's action in the extreme situation and in explaining it theoretically, Strauss's interpretation of Aristotle's natural right teaching may be deemed to provide a most compelling example of an important aspect of the criticism, in the Stagirite's treatises, of his contemporaries' beliefs about the political life, i.e., the virtuous life. This criticism can be summarized as the opposition between *eudaimonia*, the best life as the exercise of virtue for its own sake, and *eudokimasia*, the honorific reputation that a man desires to obtain by displaying virtuous acts in the city.⁴⁸ Virtuous life must be liberated from public honor because the average man makes rather poor distinctions as regards the good life: most people envisage truth without precision; the young ones are, besides, unable to judge particular circumstances well.⁴⁹ There is indeed a potentially tragic paradox concerning man's political nature: "it is for the sake of the exalted actions that the city must be deemed to exist" (*Pol.* 1281a2–3), but most citizens are unable to discern exalted actions. Insofar as the action of the statesman in the extreme situation is the virtuous action that is subject to the most extreme influence of contingency—and *thereby* the most exalted action, i.e., the action that ultimately tests the virtuous character of the agent—such action will be misjudged by the people at large. Instead of gratifying honor or the enhancement of his reputation, the statesman should expect to arouse suspicion on the part of his fellow citizens: the radical nature of his action might make this most excellent man seem to be that unruly beast more despicable than the worst citizen (*Pol.* 1253a30–37). So majestic is the action demanded of the statesman in the circumstances of political exception that all the highest esteemed virtues of character of Aristotelian ethics are related to it: not only *kalokagathia* as the perfect ensemble of virtues, as well as justice (*dikaiosunē*) as the exercise of perfect virtue regarding others, but also *megalopsuchia*,⁵⁰ that greatness of soul by virtue of which a man does not seek to be honored by men he does not deem to be themselves honorable.⁵¹ Strauss is perfectly aware of this predicament of political action in extreme situations. For this reason, he warns his reader to "leave these sad exigencies covered with the veil with which they are justly covered" (NRH, 160). Such a predicament explains also the immense responsibility of the historian whose task is belatedly to discriminate between just extreme actions and unjust extreme

⁴⁸See *Eth. Nic.* 1095b22–1096a4 and *Eth. Eud.* 1216a19–27.

⁴⁹See *Eth. Eud.* 1216b32–33 for the formula "truly said but lacking in precision" characteristic of the common opinions regarding *eudaimonia*. For the lack of prudence of the young people see *Eth. Nic.* 1142a11–20.

⁵⁰Smith, *Reading Leo Strauss*, 196, refers to a letter addressed to Karl Löwith in which Strauss mentions Winston Churchill as an example of *megalopsuchia*.

⁵¹*Eth. Nic.* 1124a16–20 emphasizes the little importance this man sees in being awarded the honors he knows he deserves. Needless to say, such a man is liberated to exercise the most exalted political actions by knowing that the honorability of his actions is independent of the common opinion about it.

actions (161): the historian's judgment acquits the good statesman before humankind from the previous conviction passed by his own countrymen.

Epilogue: The Singular Predicament of Classic Natural Right Teaching

Strauss's study of Aristotelian natural right culminates in the unification of statesmanship and morality in a common theoretical framework in which political problems are neither overlooked by apolitical ethics nor aggravated by belligerent politics. The extant texts of Aristotle do not allow us to affirm that this precise articulation of the theoretical framework would be greeted by the philosopher, but there is no doubt that a tour de force of this kind was aimed at by the common science developed by the *Politics* and the *Nicomachean* and the *Eudemian Ethics*.⁵² Moreover, this interpretation has the merit of potentially building a coherent picture containing some very important aspects of Aristotle's political thought: the unity of political science, the rejection of public honor as the *raison d'être* of political life, the ineluctable influence of contingency over human action. Particularly noteworthy is the fact that Strauss seems to confer new life on the statements of the *Nicomachean Ethics* on natural right: there seems to be an unbridgeable gap between the text and its subject matter that welcomes his unorthodoxy. Perhaps it is in the nature of the problem of political exception not only to force the statesman to act outside the scope of legal commands, but also to force the philosopher to think beyond the strict wording of the texts on this subject. The attempt by totalitarian governments to make political exception a permanent situation thus poses a fundamental challenge to the tradition of natural right: the distinction between orthodoxy and unorthodoxy becomes blurred and the tradition has to be deeply rethought. One of Strauss's accomplishments is to prove that no matter how extraordinary the degree of contingency to which the exercise of statesmanship is subject, natural right shall still be described as "having the same force everywhere." His risky interpretation of the *Nicomachean Ethics* suggests that the ancient philosopher had tentatively envisaged and enunciated in unavoidably vague discourse—his "hesitations and ambiguities" (163)—what the contemporary world has only recently allowed political scientists to ascertain and demonstrate. One must conclude therefore that unorthodoxy is unavoidable for the theoretical treatment of a subject such as classic natural right: the potential inventiveness of humans to bring chaos into politics being unlimited, not only natural right but also the natural right teaching—insofar as it aims at investigating that which is everlasting in politics—must be "entirely changeable."

⁵²*Pol.* 1295a25–b1, 1323a14–21, 1337a11–35; *Eth. Eud.* 1216b35–1217a10, 1218b11–14; *Eth. Nic.* 1094a18–b11, 1130b25–29, 1179a33–1180b28.