

CONFERENCE: THE FOUNDATION OF HUMAN RIGHTS: CATHOLIC CONTRIBUTIONS, PART I: ARTICLE: ARISTOTLE ON HUMAN RIGHTS

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Text

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There is no theory of human rights in Aristotle, yet, Aristotelian political theory provides a suitable context for the affirmation and development of a theory of human rights.

I. No Theory of Human Rights in Aristotle

This claim that there is no theory of human rights in Aristotle can be approached in various ways. One way is to observe that Aristotle has no language for human rights, and that, indeed, his central notions for political philosophy are strikingly different - because what he wishes to emphasize are such notions as merit, virtue, participation in the constitution, and citizenship. ¹ For Aristotle, *dikaion*, like the Latin *ius*, signifies an objective equality of persons in relation to goods of fortune and with a view to some transaction or exchange. ² Again, citizens subjectively may possess *exousia*, similar to Latin *potestas*, but this *exousia* is acquired and based on some antecedent claim of merit. ³ Finally, the term *kuriōs* represents *de facto* control, or sometimes a lawmaking power, but not an immunity from lawful restriction. ⁴

[*380] As is well known, Fred Miller has claimed that Aristotle had a notion of human rights; ⁵ yet it seems to me that Malcolm Schofield is correct in his assessment:

¹ See Malcolm Schofield, *Sharing in the Constitution*, 49 *Rev. Metaphysics* 831, 857 (1996).

² Michael Pakaluk, *Aristotle's Nicomachean Ethics: An Introduction* 181-83 (2005); see also Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law 1150-1625*, at 21-22 (Wm. B. Eerdmans Publ'g Co. 2d ed. 2001).

³ Cf. Tierney, *supra* note 2, at 28-29.

⁴ See Schofield, *supra* note 1, at 856.

⁵ See generally Fred D. Miller, Jr., *Nature, Justice, and Rights in Aristotle's Politics* (1995) (arguing that nature, justice, and rights were central to Aristotle's political thought, and that Aristotle's theory of justice supports claims of individual rights, which are political and based in nature).

In order to exhibit Aristotle's philosophy of political justice as a rights-based theory, [Miller] has to undertake a massive exercise in what we might call retranslation. The ordinary meanings of words like *dikaion* ("just"), *exousia* ("power"), and *kurios* ("in authority/control") are subject to a revisionist program of linguistic regimentation. How Aristotle actually talks is the best clue we have to how he thinks. If he thinks in terms of worth or desert, it is not, at the end of the day, very helpful to recast that thinking in terms of rights.⁶

The other way of approaching the thesis is to observe that Aristotle either rejects the purposes for which the theory of human rights has typically been proposed, or achieves those purposes through means, characteristic of his philosophy, other than through any such notion as human rights, as will be the argument in the present Article.

II. The Doctrine of Human Rights and Its Various Purposes in Political Discourse and Political Action

A. Rights as Truths About Equality

The doctrine of human rights may be invoked simply to assert a truth, the equality of all human beings, a "proposition," which political association is then meant to affirm through its institutions and procedures.⁷ Thus, Thomas Jefferson in the Declaration of Independence appeals to "truths" which are said to be "self-evident,"⁸ and Abraham Lincoln astonishingly asserts that the purpose of the American republic was to affirm a proposition, as the nation was **[*381]** "conceived in liberty, and dedicated to the proposition that all men are created equal."⁹ Call this "Rights as Truths about Equality."

B. Rights as Limiting Government

It may serve to mark out a limited purpose of government - namely, that of vindicating certain enumerated rights - and therefore to establish a limited authority of government, so that the government may not licitly do more than vindicate those rights.¹⁰ Call this, "Rights as Limiting Government."

C. Rights as Justifying Revolution

The doctrine has been used to establish a right to revolution, precisely by vesting the authority to vindicate rights originally with the people: on this view, political sovereignty is understood as the people's transferring this right to the government in a social contract, and, if the government fails to keep its end of the bargain, the people become justified in initiating a revolution.¹¹ Call this "Rights as Justifying Revolution."

D. Rights as Trumping Deliberation

More recently, the theory is appealed to in order to place certain matters outside the democratic process, not subject to ordinary democratic deliberation and debate: whatever is alleged to be right in this sense, then, is regarded as forever fixed and irrevocable - since a "right" is a political reality which cannot justifiably be altered

⁶ Schofield, *supra* note 1, at 856.

⁷ See, e.g., Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art. 21 (Dec. 10, 1948).

⁸ The Declaration of Independence para. 2 (U.S. 1776).

⁹ Abraham Lincoln, Address at Gettysburg, Pennsylvania (Nov. 19, 1863), in *Lincoln: Selected Speeches and Writings* 405, 405 (Don E. Fehrenbacher ed., 1992).

¹⁰ See, e.g., John Stuart Mill, *On Liberty* (1859), reprinted in *John Stuart Mill: On Liberty and Other Essays* 5, 5-19 (John Gray ed., 1991).

¹¹ E.g., 2 Abraham Lincoln, Resolutions in Behalf of Hungarian Freedom (Jan. 9, 1852), reprinted in *The Collected Works of Abraham Lincoln* 115, 115 (Roy P. Basler ed., 1953). Lincoln writes, "it is the right of any people, sufficiently numerous for national independence, to throw off, to revolutionize, their existing form of government, and to establish such other in its stead as they may choose." *Id.* See also John Locke, *Second Treatise of Government*, Ch. XIX, § 243, reprinted in *Locke: Two Treatises of Government* 265, 427-28 (Peter Laslett ed., 1988).

even, supposing, in the establishment of a new constitution in the wake of a revolution, since any valid social contract must presuppose and be [*382] effected within the boundaries of these rights. ¹² Call this "Rights as Trumping Deliberation."

E. Rights as Implying Harms

More recently, too, the doctrine is invoked to provide a popular framework in which complaints may be easily formulable ¹³ and which receive attention precisely because the complaints allege harm: the claim that "my rights are being violated" alleges harm and is rhetorically simpler and more powerful than, "I am the incidental subject of this person's deliberate realization of an objective state of inequality." ¹⁴ What is referred to as "rights talk" is simply the habit, especially among Americans, of casting every disagreement in terms of conflicting claims of violations of "rights" in this sense. ¹⁵ Call this "Rights as Implying Harms."

F. Rights as Goods

There is one last purpose for the language of rights which is orthogonal to most of these just mentioned. Most of the ones mentioned make claims of a kind of legal necessity, of something which must be so - must be done, must not be omitted, must be honored, must not be put up for grabs, and so on. ¹⁶ Indeed, that is why we call them "rights" - the very logic of right (as opposed to good) imports some notion of necessity. ¹⁷ And yet "right" nonetheless can also be used in the weaker sense of "what is owing to someone as a consequence of its being good." ¹⁸ In the sense in which anything good for a person is due to him, that person may be said to [*383] have that by "right," and, therefore (and only in that sense) to "have a right" to it. ¹⁹ On this way of speaking, everything good for someone is something to which he has a "right," which is simply to say that if he lacks it he is somehow incomplete or imperfect. ²⁰ Thus, finally, the appeal to rights may have the function of marking out that which

¹² Cf. Ronald Dworkin, Rights as Trumps, in *Theories of Rights* 153, 158 (Jeremy Waldron ed., 1984).

¹³ How, and how far, this truth is meant to be represented in a society's institutions is the reason for the differences between libertarians and social democrats. The former hold that it is enough if attacks on life, liberty, and property are prevented; the latter hold, rather, that a modestly favorable standard of living, at least, needs to be insured for all, or else human equality is effectively negated in a society.

¹⁴ For the so-called "Harm Principle" as providing the rationale for control through law, see Mill, *supra* note 10, at 14.

¹⁵ See Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse*, at xi (1991).

¹⁶ See John Finnis, *Natural Law and Natural Rights* 198-99 (1999).

¹⁷ See *id.* at 199-205.

¹⁸ Cf. *Greek-English Lexicon* 336 (Henry George Liddell et al. eds., New York, Harper & Bros. 7th ed. 1882) (describing the relation of the two senses of *deon* in Greek).

¹⁹ See, e.g., Pope John XXIII, *Pacem in Terris* [Encyclical Letter on Establishing Universal Peace in Truth, Justice, Charity, and Liberty] P 11 (1963).

But first We must speak of man's rights. Man has the right to live. He has the right to bodily integrity and to the means necessary for the proper development of life, particularly food, clothing, shelter, medical care, rest, and, finally, the necessary social services. In consequence, he has the right to be looked after in the event of ill-health; disability stemming from his work; widowhood; old age; enforced unemployment; or whenever through no fault of his own he is deprived of the means of livelihood.

Id.

²⁰ Article 22 of the Universal Declaration of Human Rights marks the transition to this notion of "right." See G.A. Res. 217 (III) A, *supra* note 7, art. 22.

political authority is for; to identify the various goods - "external goods" in the classical sense, but not necessarily commutable goods - which are such that a government understood as aiming to serve its citizens cannot claim to be successful unless all citizens enjoy them. ²¹ Call this "Rights as Goods."

III. No Use in Aristotle for a Theory of Rights

Now, as I said, Aristotle shares none of these purposes, and thus he would have no use for a theory of rights. As a theory of rights could play no role in his political philosophy, it is misguided to attribute such a theory to him.

A. Rights as Truths About Equality

As regards the first purpose of rights, Aristotle has no notion of an association's existing in order to represent in its organization or [*384] procedures a truth. ²² He holds that associations arise in order to procure goods for their members: that the political association aims to procure a complete good would not be a relevant difference. ²³ Moreover, of course, Aristotle does not think it is in fact true that all human beings are equal, as he believes that there are human beings who by nature are slaves, and that women lack an authoritative reasoning power which men have. ²⁴ These views are not superficial endoxa for him, since he thinks generally that human reasonability has manifestations which are different in kind and hierarchically ordered - as seen, he thinks, in the ordering and subordination of that part of the soul which is rational insofar as it "shares in logos" to that part which has logos on its own. ²⁵

B. Rights as Limiting Government

As regards the second purpose of rights, I see no evidence of Aristotle's holding to any in principle limits on political authority. The deep reason for this is that he regards political authority as a kind of knowledge (episteme) or expertise (dunamis, techne), and it would be strange to say that knowledge is or should be limited, or that it is best when it is limited - since what could limit knowledge besides ignorance? ²⁶ To be sure, for Aristotle, knowledge is always knowledge of one thing and therefore not knowledge of something else - knowledge has something distinctive or distinguishing (idion) about it, just like a function or role (ergon). ²⁷ But Aristotle holds that

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Id.

²¹ As article 28 in the Universal Declaration puts it: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." Id. art. 28.

²² Compare Aristotle, *Nicomachean Ethics*, Bk. I, Chs. 1-2, at 3-7 (G.P. Goold ed., H. Rackham trans., Harvard Univ. Press rev. ed. 1934) (c. 384 B.C.) [hereinafter *Nicomachean Ethics*], with id. Bk. VI, Ch. 1-2, at 324-31 (reasoning that a political association's formation and governance falls under practical reason, whereas it is the role of theoretical reason to articulate truths).

²³ Aristotle, *Politics*, Bk. I, Ch. 1, at 2-13 (G.P. Goold ed., H. Rackham trans., Harv. Univ. Press 1932) (c. 350 B.C.) [hereinafter *Politics*].

²⁴ Id.

²⁵ See *Nicomachean Ethics*, supra note 22, Bk. I, Ch. 8, at 63.

²⁶ Compare id. Bk. I, Chs. 1-2, at 3-7, and Plato, *The Republic of Plato*, Ch. 4, at 33-34 (Francis MacDonald Cornford ed. & trans., Oxford Univ. Press 1992) (c. 360 B.C.).

²⁷ When Aristotle gives "knowledge" (episteme) as an intellectual virtue in Book Six of *Nicomachean Ethics*, he regards "knowledge" as a type, of which types or branches of knowledge are instances. See *Nicomachean Ethics*, supra note 22, Bk. VI, Ch. 1, at 327.

political authority is governance over a complete form of association for the highest good, happiness, which seems to imply that there are no in principle restrictions, at least, on the scope of care of [*385] government.²⁸ It would not follow that government so understood must be totalitarian, since there are many good Aristotelian defenses of subsidiarity and of the legitimate autonomy of intermediate institutions, and, besides, Aristotle thinks that good rule is "constitutional" in character anyway, and in its tendency often indirect, rather than despotic and exercised in an unmediated fashion.²⁹

C. Rights as Justifying Revolution

As regards the third purpose of rights, one finds in Aristotle no study or articulation of the grounds for justifiable revolution.³⁰ That task was taken up by later thinkers in the tradition, who regarded the right to revolution as a kind of development of Aristotle's doctrines.³¹ Rather, Aristotle's view that political authority is by nature, and that it has evolved somehow out of the authority of the family, would of course make him more reluctant to endorse a revolution, or revolutionary principles, than someone who regarded political authority as conventional.³²

D. Rights as Trumping Deliberation

As regards the fourth purpose of rights, Aristotle might just think that there is a natural law - that is, some fundamental precepts of practical reason which are true by nature rather than convention, and which set the boundaries within which ordinary political deliberation must operate.³³ I believe that he does: but, notoriously, the doctrine [*386] of natural law is not the doctrine of natural rights, in part because natural law is directed at, or somehow exists "for," a natural community which has a common good, and in part because, although natural law implies a lawgiver, natural rights themselves do not imply that anyone has endowed them.³⁴

E. Rights as Implying Harms

As regards the fifth purpose of rights, to say that we use "rights language" to advance claims of harm is equivalent to saying that we lack other resources, or at best that we prefer not to use them; but Aristotle had lots of favored resources at hand for this purpose: I mean not simply that he had available the language of virtues and vices, of honor and kalon, and of contempt and shame,³⁵ but also that "law" in the Athens of Aristotle was understood as somehow ruling out anything bad, not simply violations of "rights" - think of how it was presumed by Socrates'

²⁸ See *id.* Bk. I, Ch. 2, at 7.

²⁹ See generally Michael Pakaluk, *Is the Common Good of Political Society Limited and Instrumental?*, 55 *Rev. Metaphysics* 57 (2001).

³⁰ Harvey C. Mansfield, Jr., *The Right of Revolution*, 105 *Daedalus*, no. 4, 1976, at 151, 160 ("Aristotle does not affirm the right of revolution; he merely says that revolutions happen ..."); see also *Politics*, *supra* note 23, Bk. V, at 370.

³¹ See, e.g., St. Robert Bellarmine, *De Laicis or, The Treatise on Civil Government*, Ch. 6 (Kathleen E. Murphy ed. & trans., Fordham Univ. Press 1928) (1898) (giving an Aristotelian account of the origin of political society as part of the reason for the claim that political authority depends in some way on the consent of the governed); but cf. Paul E. Sigmund, *The Consent of the Governed and the Right of Revolution: Cardinal Bellarmine, the Locke-Filmer Debate, and the Founding Fathers 1-13* (Aug. 27, 2003) (unpublished manuscript), available at http://www.allacademic.com/meta/p63480_index.html.

³² See Mansfield, Jr., *supra* note 30, at 160.

³³ See Michael Pakaluk, *Aristotle, Natural Law, and the Founders, Natural Law, Natural Rights, & Am. Constitutionalism*, <http://www.nlnrac.org/classical/aristotle> (last visited Apr. 16, 2012).

³⁴ See, e.g., Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* 143-71 (2001) (discussing the disputes about the philosophical basis of the Universal Declaration of Human Rights).

³⁵ See generally *Nicomachean Ethics*, *supra* note 22, Bks. III-V, at 116-323 (giving a detailed account of the individual moral virtues).

accusers that he must have broken the law if he had been doing anything improper or unseemly - so that an appeal to "unlawfulness" or "lawlessness" would be enough to provide a basis for a claim against another. ³⁶

F. Rights as Goods

Obviously, too, Aristotle would not need a language of "rights" to spell out the common good, or anyone's particular good, because his theory of goods was full enough and rich enough for that purpose; furthermore, for him "civic friendship" was supposed to play the role which is played, in our case, by a sense of alarm and felt urgency in the realization that people's "rights" are being violated - and so this takes care of the sixth purpose of rights as well. ³⁷

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Conclusion

So I conclude that Aristotle endorsed none of the purposes for which theories of rights are advanced or, if he did so, he accomplished those purposes other than through applying notions of "human rights." We should remember as well that the principles for which Aristotle was mainly admired by those sober and balanced political theorists, the American Founders, had nothing to do with theories of natural law or natural rights. Aristotle was frequently cited for his views that political authority should be expressed in law rather than kept implicit in the will of a single person or group of persons; that when the rule of law corresponds to truths of natural justice, then, in an important sense divine rather than human reason orders the affairs of the body politic; that there is a natural aristocracy, related to real differences in virtue among persons, and skilled statecraft arranges things so that this element acquires authority, or, failing that, blends democratic and oligarchic influences in society to approximate to that outcome; and that the best form of government in nearly all circumstances involves the balancing of aspects of all three pure regimes (kingship, aristocracy, and timocracy). ³⁸ We sometimes take political theory to be expressible completely in a framework of rights, but for the Founders rights were something like a presupposition of a free society, to which recourse was necessary mainly in emergencies; hence, although natural rights were indeed appealed to by the Founders in the Declaration of Independence, at such a time of emergency, it was obviously considered a live possibility among Framers that the Constitution contain no mention of rights at all. ³⁹ Presumably to allot such a role to rights today might count as sober and balanced as well, which Aristotle may indeed help us in doing.

Aristotelian thought about how political society relates to natural associations such as the family, and to human nature generally, seems an important corrective to rights discourse. ⁴⁰ His doctrine that **[*388]** political authority is a development of paternal authority implies that there is and should be real authority in intermediate institutions - in parents and the school principal as much as in Congress. ⁴¹ His teaching that civic intelligence and civic friendship

³⁶ Plato, *Apology*, reprinted in *Plato: Complete Works* 17, 17-36 (John M. Cooper ed., Hackett Publ'g Co. 1997) (c. 380 B.C.); see also Douglas M. MacDowell, *The Law in Classical Athens* 10-23, 41-52 (1978). Consider in this regard how for Aristotle the general virtue of justice contrasts with lawlessness. See generally *Nicomachean Ethics*, supra note 22, Bk. V, at 252.

³⁷ See, e.g., Anthony W. Price, *Love and Friendship in Plato and Aristotle* 189-205 (1990) (discussing civic friendship in Aristotle).

³⁸ See Pakaluk, supra note 33.

³⁹ The Bill of Rights was added to the Constitution as a series of amendments, and many of the Framers regarded that addition as not only unnecessary but also potentially harmful. See, e.g., *The Federalist* No. 84, at 631 (Alexander Hamilton) (John C. Hamilton ed., Regnery Publ'g Inc. 1998) ("Bills of rights ... are not only unnecessary in the proposed constitution, but would even be dangerous.").

⁴⁰ See Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, at ix-xi (3d ed. 2007).

⁴¹ See *Politics*, supra note 23, Bk. I, Ch. 2, at 13-31; cf. Mark C. Henrie, *Rethinking American Conservatism in the 1990s: The Struggle Against Homogenization*, 28 *Intercollegiate Rev.*, no. 2, 1993, at 8.

develop out of familial affection provides an argument why the family must be safeguarded for the sake of the political common good.⁴²

Of course various antecedents of the doctrine of the dignity of the human person are evident in Aristotle. Through his restriction, in principle, of slavery to natural slaves only, he denied that any free human being may be made to exist for the sake of others.⁴³ Like many classical philosophers, Aristotle regarded human beings as different in kind from other animals and surpassing them in preciousness through a kind of likeness to the divine nature.⁴⁴ Finally, like many classical philosophers, he thought that some human beings, at least, had a vocation to become immortal and therefore had a destiny that was prior to and transcended the merely political, evident in exhortation in the *Nicomachean Ethics*, echoing his *Protrepticus*, that we ought to strive to be immortal as much as possible.⁴⁵

So, although no doctrine of human rights may be found in Aristotle, Aristotelian political philosophy provides a context in which such a doctrine, if one wished, could be articulated and developed with evident proportion and balance, and historically it played that role in fact.⁴⁶

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⁴² Michael Pakaluk, *Natural Law and Civil Society*, in *Alternative Conceptions of Civil Society* 131, 141 (Simone Chambers & Will Kymlicka eds., 2002).

⁴³ See *Politics*, *supra* note 23, Bk. I, Ch. II, at 12-31.

⁴⁴ See *Nicomachean Ethics*, *supra* note 22, Bk. X, Chs. 6-8, at 607-23.

⁴⁵ *Id.* Bk. X, Ch. 7, at 617; see also D.S. Hutchinson & Monte Ransome Johnson, *Authenticating Aristotle's Protrepticus*, 29 *Oxford Stud. Ancient Phil.* 193 (2005); D.S. Hutchinson & Monte Ransome Johnson, *Aristotle's Protrepticus: A Provisional Reconstruction, protreptic*, <https://sites.google.com/a/protreptic.info/www/> (last visited Apr. 16, 2012).

⁴⁶ See A. S. McGrade, *Aristotle's Place in the History of Natural Rights*, 49 *Rev. Metaphysics* 803, 803-04 (1996).