Autonomy, Authority, and Law-Abiding: Aristotle EN v. I-2

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Abstract

Scholars disagree about Aristotle's views on political obligation. Most treat Aristotle as a kind of authoritarian, but a few think he was a proponent of individual autonomy. Aristotle never presents any arguments explicitly for or against political obligation, however, so his views have to be inferred. The most recent works have tended to piece together Aristotle's argument from what he tells us in the Politics about the political and legislative activity of a good citizen. But we ought to look at places where Aristotle's ethical and political theory overlap. A good text for this examination is EN V.1-2 where Aristotle describes justice as law-abiding. A close look here shows that Aristotle takes law-abiding to be the essence of justice. Thus he appears to think that political authority is more fundamental than individual autonomy. An argument can be made, however, that Aristotle takes it to be in an individual's best interest to have this attitude towards law. Thus he may believe that although conflicts between individual and civic interest should generally be resolved in favour of the city, the decision, by a just person, to resolve them this way, is at least consistent with autonomy, and grounded in prudence.

I. Aristotle and the Question of Political Obligation

On what grounds, if any, does an individual have a general obligation to obey the laws of his or her state? This is a fundamental question of modern political philosophy. But it is a question that Aristotle nowhere explicitly addresses. Why? Many of the answers that have been given are superficial. We are told that he simply could not put the question, at least not in the way modern philosophers do.[1] Aristotle, it is said, lacked our concepts of autonomy and individual rights.[2] He did not think of human beings as individuals in the modern political sense.[3] The concept of obligation does not play an important role in his ethics or politics.[4] He had a broader (some

would say richer) conception of law than we have, he had a different conception of authority, and in place of the state he had the polis, that place of "sunshine [and] the common life".[5] There is some truth in all of this. Nevertheless, the distance between us and Aristotle is not so great. For whatever vocabulary we use, the question of political obligation arises whenever there is conflict between what the law commands (or forbids) and what a deliberate agent believes should be done. This conflict is not something only moderns can see.

II. The relevance of the *endoxa*

It is an explicit commitment of Aristotle's method in ethics to set out and consider all the phenomena that pertain to the most significant ethical matters, and to preserve and harmonise the *endoxa*; the "reputable opinions" of the many, the wise, or the most wise. From this point of view it seems surprising that Aristotle does not raise the question of political obligation (in some form or other). He was certainly aware that issues of this sort were important and controversial. He was familiar, for example, with Sophocles' *Antigone*. In the *Rhetoric* he even quotes, with obvious approval, Antigone's famous speech to Creon after she has been caught violating the law that forbids the burial of Polyneices:

For me it was not Zeus who made that order.
Nor did that Justice who lives with the gods below
mark out such laws to hold among mankind.
Nor did I think that your orders were so strong
that you, a mortal man, could over-run
the gods' unwritten and unfailing laws.
Not now, nor yesterday's, they always live
and no one knows their origin in time.[6]

Οὐ γάρ τί μοι Ζεὺς ἦν ὁ κηρύξας τάδε,
οὐδ' ἡ ξύνοικος τῶν κάτω θεῶν Δίκη·
οὐ τούσδ' ἐν ἀνθρώποισιν ὥρισαν νόμους·
οὐδὲ σθένειν τοσοῦτον ᾠόμην τὰ σὰ
κηρύγμαθ' ὥστ' ἄγραπτα κἀσφαλῆ θεῶν
νόμιμα δύνασθαι θνητὸν ὄνθ' ὑπερδραμεῖν.
Οὐ γάρ τι νῦν γε κἀχθές, ἀλλ' ἀεί ποτε
ζῇ ταῦτα, κοὐδεὶς οἶδεν ἐξ ὅτου 'φάνη.

It is noteworthy that Antigone does not entirely repudiate Creon's authority. She only says that Creon's orders are weaker than the gods'. Thus, she implies a basis for deciding between competing obligations in the strength and durability of different laws. Creon, on the other hand, is depicted until very nearly the end of the play as thinking that one's obligation to obey the (man-made) laws of the city is absolute and insuperable. The consequences of disobedience include not only the destruction of the city, but of its people. This view is clearly illustrated in Creon's speech to Haemon:

But he who crosses law, or forces it,
or hopes to bring the rulers under him
shall never have a word of praise from me.
The man the state has put in place must have
obedient hearing to his least command

Ὅστις δ' ὑπερβὰς ἢ νόμους βιάζεται,
ἢ τοὺπιτάσσειν τοῖς κρατοῦσιν ἐννοεῖ,
οὐκ ἔστ' ἐπαίνου τοῦτον ἐξ ἐμοῦ τυχεῖν.
Ἀλλ' ὃν πόλις στήσειε, τοῦδε χρὴ κλύειν
καὶ σμικρὰ καὶ δίκαια καὶ τἀναντία.

when it is right, and even when it's not.
He who accepts this teaching I can trust,
ruler, or ruled, to function in his place,
to stand his ground even in the storm of spears,
a mate to trust in battle at one's side.
There is no greater wrong than disobedience.
This ruins cities, this tears down our homes,
this breaks the battle front in panic rout.[7]

Καὶ τοῦτον ἂν τὸν ἄνδρα θαρσοίην ἐγὼ
καλῶς μὲν ἄρχειν, εὖ δ' ἂν ἄρχεσθαι θέλειν,
δορός τ' ἂν ἐν χειμῶνι προστεταγμένον
μένειν δίκαιον κἀγαθὸν παραστάτην.
'Αναρχίας δὲ μεῖζον οὐκ ἔστιν κακόν·
αὕτη πόλεις ὄλλυσιν, ἥδ' ἀναστάτους
οἴκους τίθησιν, ἥδε συμμάχου δορὸς
τροπὰς καταρρήγνυσι

There are many who think that by the time he wrote the *Ethics* and *Politics* Aristotle had second thoughts about Antigone's speech, and that he adopted a view more along Creon's lines,[8] but he can hardly have forgotten the issue. And if he has changed his view without any discussion of the matter, that appears all the more curious to us.

Consider, in addition to Antigone's predicament, the predicaments of Socrates. When Socrates was among the Presidents of the Council during the trial of the Arginusae, he alone defied the others and refused to try the generals collectively (*Apology* 32b). In doing this he faced the possibility of arrest and execution (despite the fact that his action was legally correct). When the Thirty Tyrants ordered Socrates to extradite Leon of Salamis he refused yet again, and this time his inaction was in direct violation of a judicial order. True, following his conviction for impiety Socrates decided to obey the laws and suffer death. But the thing to notice is that *he decided* to obey, and only after much deliberation. The obligation to obey was not manifest. Indeed, the account of Socrates' deliberation in Plato's *Crito* is regarded as a classic in political theory: virtually all the modern arguments for political obligation are anticipated in it. If Plato could see the question of political obligation, then, how could Aristotle have failed to see it?

The cases of Antigone and Socrates are striking, and they were obviously known to Aristotle. But there is evidence that the question of political obligation was not restricted or unusual.[9] Thrasymachus' derision of justice as "another's good" shows that some thinkers were wondering why any powerful person should obey the laws (again Aristotle knew this well). And as Richard Sorabji has pointed out, plenty of Aristotle's predecessors and contemporaries had similar concerns.[10] There was Antisthenes, who claimed that "the wise man's public life will not be in accordance with established laws, but the law of virtue" (DL 6.11), and Diogenes who "was bound by no law and engaged in no civic duties" (Maximus Tyrius, Philos. 36, 5). There was Crates who claimed that his citizenship was "not the legal one but the same as that of Diogenes" (DL 6.98) There were Theodorus, Aristippus, and — among the Stoics — Zeno and Ariston of Chios, all of whom denied or avoided the authority of the polis.[11]

It is just possible that Aristotle himself felt the pinch of political obligation. If he too was indicted for impiety, as tradition has it, he

apparently felt no necessity to remain, stand trial and suffer punishment. (If you say, "but then Athens was not his polis," we may well wonder why Aristotle, of all people, lived mostly outside the bounds of citizenship. Did he share the views of the Cynics, Cyrenaics and Stoics?) It is astonishing to find no discussion of these things in Aristotle. Here we have a serious ethical issue, with a considerable number of associated endoxa, some of which evidently conflict.

I think, though, that we have enough to persuade us that Aristotle could not have been blind to the question of political obligation. If he does not discuss it directly, then perhaps it is because he holds views which settle it prior to direct discussion. What views could these be? Two different answers have each enjoyed the support of scholars. The first is that Aristotle's ethical theory, which makes deliberation and choice necessary for virtue and a good life, presupposes that autonomy is fundamental. In that case political obligations are all subordinate to prudential judgment, and conflict is settled, by appeal to an individual's best interest. The second is that Aristotle's political theory, which makes the city prior to the individual, presupposes that authority is fundamental. In that case, political obligations are primary and conflict is settled by appeal to what is in the interest of the polis. There is evidence to support each of these answers. The problem is, however, that the two positions are mutually inconsistent. I will suggest later that Aristotle's views about law-abiding allow for a small amount of compromise between autonomy or authority, but before turning to that, it will help to have a clearer idea what the two opposed positions are.

III. Autonomy

The view that Aristotle treats individual autonomy as more fundamental than the recognition of authority is taken by scholars like Edouard Zeller, W. L. Newman, D. J. Allan, Elizabeth Browning Cole, Carnes Lord and Fred Miller. They argue that "free self-development"[12], "freedom of movement"[13], being "self-directed"[14], and taking responsibility for our own actions is a precondition of the good human life. To a large extent their view depends on Aristotle's discussions of προαίρεσις (choice/decision), φρόνησις (practical wisdom) and αὐταρκεία (self-sufficiency). The analysis of each of these terms is complicated and controversial. Aristotle, perhaps intentionally, does not use them with consistent precision. I can only summarise here the role they are supposed to play in grounding human autonomy.

Προαίρεσις, according to Aristotle, is necessary for ἀρετη and consequently also for εὐδαιμονία. Aristotle defines ἀρετή as a ἕξις προαιρετική (*EN* II.6 1106b36; VI.2 1139a22); a phrase that seems to express deep ambivalence.[15] In whatever way the condition "involves

choice", however, choice requires deliberation, and deliberation implies freedom from constraint, since we only deliberate about things that are in our power.[16] Thus political obligation, as such, appears to cut against the grain of Aristotle's ethical theory. If we are law-abiding, it should be because the deeds which the laws command are worth performing "for their own sake" [δι' αὐτά], not for any other reason.

The importance of choice in the ethics is underscored by Aristotle's account of φρόνησις. For that intellectual virtue, the keystone of Aristotle's ethics, is tantamount to excellence in deliberation.[17] Aristotle says that the mark of the φρόνιμος is "the ability to deliberate well about things good and advantageous to him, not [only] in part—i.e. not [only] about what sort of things are conducive to health, or strength—but on the whole, i.e. about what sort of things conduce to living well." (*EN* VI.5 1140a26-28).[18] So this would appear to reinforce the view that autonomy is necessary to εὐδαιμονία, since φρόνησις implies deliberation of all one's actions.

Some scholars, such as Jonathan Barnes, find this line of thought completely unconvincing. Barnes says it rests on a "childish confusion" because it treats the freedom εὐδαιμονία requires as if it were political liberty.[19] Now it is true that Aristotle does not speak of political liberty in his discussions of choice and practical wisdom. The freedom on which choice and deliberation depend is just freedom from physical constraint (βίᾳ), not freedom from coercion (see *EN* III.1). But Aristotle explicitly acknowledges that the voluntary character of acts "performed from fear of greater [evils] or from some noble [object]" (διὰ φόβον μειζόνων πράττεται ἢ διὰ καλόν τι, 1110a4-5) is compromised. Hence he calls such actions "mixed" (μικταί). It seems doubtful that a flourishing life could be comprised of very many of these mixed actions.[20] Nevertheless, Barnes insists that virtue cannot require political liberty, "for otherwise law-abiding actions could never be virtuous—and that is absurd."[21] Here, however, there *is* a childish confusion. It would, of course, be absurd to say that the deeds which the law enjoins can under no circumstances be virtuous, but it would not be absurd to suggest that deeds performed διὰ νόμιμον could not be *fully* virtuous, because virtuous deeds have to be performed δι' αὐτά. That, I take it, is the point being urged by the friends of autonomy. Thus, although Aristotle does not infer, from his discussions of choice and practical wisdom, that ethical agents require autonomy, there is some reason to draw the inference for him.

Before we take up the arguments for authority, we still need to consider an argument about autonomy and αὐταρκεία. Elizabeth Cole claims that Aristotle's conception of αὐταρκεία, "self-sufficiency", is approximately the same as our modern conception of autonomy.[22] This view initially seems plausible, and makes Aristotle appear to be a strong

proponent of autonomy, for αὐταρκεία is a necessary condition of happiness. I find Cole's argument misleading. It is not general autonomy (a negative concept) that is at issue here, but moral autonomy (a positive concept, that implies reasoning, deliberating and deciding for oneself). Upon examination, there turns out to be no good reason to think that Aristotle uses αὔταρκες to mean "morally autonomous."

In its most general usage, English "autonomous" just means "independent." There are many contexts in Aristotle where "independent" is a suitable translation of αὔταρκες (e.g. at *EN* III.3.1112b1 where Aristotle speaks about "exact and independent sciences"; ἀκριβεῖς καὶ αὐτάρκεις τῶν ἐπιστημῶν), but it is clearly not *moral* independence that is meant in these passages. In fact, Aristotle calls a whole range of things αὔταρκες: some sciences, as we have just seen, and also some causes,[23] natures,[24] motions,[25] properties,[26] and demonstrations.[27] Πνεύμα is on one occasion described as αὔταρκες,[28] (here the translation "autonomic" seems appropriate). In all these cases αὐταρκεία is a negative concept (x is αὔταρκες with respect to ϕ, iff it lacks nothing in order to be ϕ). If we can consistently interpret αὐταρκεία as a negative concept even in ethical contexts, then additional evidence would be needed to suggest that αὐταρκεία had some connection with moral autonomy in Aristotle. So let us consider the ethical contexts.

First, Aristotle sometimes says ἡ εὐδαιμονία ... αὐτάρκης.[29] We ought to understand this in the context of what Aristotle says about the good, in his ethical works and elsewhere. For it is clear that when Aristotle says that the good is αὔταρκες he is just asserting, as we would say, that the relation between subject and predicate is analytic.[30] It follows from this that anything is αὔταρκες just insofar as it is good. From this point of view the flourishing human being is included among things that are αὐτάρκεις in just the same way that certain sciences, causes, and natures are, and this makes it less likely that Aristotle takes αὔταρκες to mean "morally autonomous" in ethical contexts. Consider what he would say about the good woman (or the good slave!): she is αὔταρκες to the extent that she lacks nothing appropriate to a woman; but on Aristotle's view she is not fully capable of moral autonomy (and therefore he denies her political autonomy).

Aristotle does often refer to persons that he thinks could be morally autonomous as αὔταρκες. The great-souled man is αὔταρκες,[31] as is the good king,[32] the contemplative philosopher (qua contemplative),[33] and the good man generally.[34] Once again, however, these claims, are all consistent with the interpretation of αὐταρκεία as a negative concept. They suggest that it is possible for a person to be both independent (needing nothing from others) and happy. This nod in the direction of individualism eventually runs

aground, but it appears as though Aristotle must have been tempted by it, because he sometimes retains the claim that the good man is αὐταρκες even when it leads him to distort other ethical ideas. For example: the good man is self-sufficient, but friendship, an external good, is necessary for a good life; Therefore, the true friend is "another self".[35] This is surely an obscure way of speaking. Elsewhere Aristotle explicitly acknowledges that no human being is αὐταρκες,[36] and the fact that he does strongly suggests that all along he has meant no more by αὐταρκες than "lacking nothing".

In the *Politics* Aristotle says sometimes that the city[37] or the community (τὴν κοινωνίαν)[38] is αὐταρκες, and other times that the city is for the sake of αὐταρκεία.[39] These claims are ambiguous as to whether αὐταρκεία is a collective property (the city or community taken as a whole) or a distributive one (each citizen becomes αὐταρκες through the network of the community). Unfortunately, Aristotle does not resolve this ambiguity,[40] but even if he is referring to citizens distributively, he may still only have a negative conception of αὐταρκεία in mind. Thus, an appeal to Aristotle's conception of αὐταρκεία will not help us settle the question of political obligation. It is compatible with the thesis, which is otherwise supported by Aristotle's views about προαίρεσις and φρόνησις, that Aristotle would decide conflicts of obligation in favour of the individual, but that is all. Let us now consider the case for authority.

IV. Authority

The view that Aristotle ignores the question of political obligation because he supposes the authority of law to be fundamental is taken by, among others, Alexander Grant, J. A. Stewart, Ernest Barker, and Jonathan Barnes. Most of their evidence comes from the *Politics*, especially from Aristotle's account of the ideal city (Books VI-VII), but we may start with two statements made in the *Nicomachean Ethics*: First, political science is architectonic (I.2 1094a27). It decides even what practices will thrive in the city. Second: the good of the city is prior to the good of the individual: "even if [the end] is the same for one man and the city, that of the city appears greater and more perfect both to produce and to preserve; for though it is worthwhile [to produce and preserve the end] even just for one man, it is nobler and more divine [to produce and preserve it] for a race and for cities" (I.2 1094b7-10).[41]

These views are retained and amplified in the *Politics*. The laws make pronouncements about everything,[42] and they do so because the good of the city is prior. In fact, the city is *ontologically* prior: citizens are only parts of the whole, like a hand is part of a body.[43] On this analogy it appears that Aristotle makes the individual thoroughly subordinate. A hand may

sometimes have to be amputated to preserve the body. It is then a hand only in name, since it cannot perform its ἔργον except as part of a body. By analogy we should say that any citizen may be sacrificed for the city, and without a city is only a citizen in name. But Aristotle goes further and suggests that such a person is not even a human being, but either a god or a beast. This is because it is not just the ἔργον of a *citizen* that cannot be performed outside the city, but the ἔργον of a human being. Some have claimed that Aristotle's analogy is a misleading overstatement,[44] but he reiterates later in more explicit terms: "... at the same time we must not think that any of the citizens is of himself, but all are of the city" (VIII.1 1337a27-28).[45]

If the city is ontologically prior to the individual, then it would appear reasonable for Aristotle to decide questions of political obligation in favour of authority. The citizen has an obligation to obey the laws of his city, even if it requires him to lose his life, not because only in this way will *his own good* be realised, but because only in this way will *the city's good* be realised. To emphasise this point, scholars sometimes cite Aristotle's proposals for so-called "totalitarian" legislation,[46] including:

- laws restricting free association [VII.6 1327a37-40]
- laws restricting freedom of expression [VII.17 1336b3-5]
- laws regulating education and educational content [VIII.1 1337a11-12; cf. *EN* I.2 1094a27]
- laws governing copulation, procreation and marriage [VII.16 1334b29-32]
- laws forbidding the rearing of deformed children [VII. 1335b19-21][47]

However much liberal spirits might recoil from the thought of such laws,[48] the force of this evidence is very limited. It is likely that in addition to thinking that he thinks these are the sorts of laws which foster a city's good, Aristotle thinks these are the sorts of laws which any virtuous agent would approve.[49] Besides, it is not the *content* of a city's legal code that matters for the present argument. What matters is whether a citizen's obedience to the city is grounded in his beliefs about his own good (so that it is merely a prudential obligation), or whether it is grounded in a rightful claim of the city to have authority over him.

V. Justice as Law-Abiding

So we have two different explanations for Aristotle's neglect of the question of political obligation. Both have a certain basis in the text, but the two explanations conflict. It is true that the first stems mainly from the *Ethics* and the second mainly from the *Politics*. But we can hardly say that Aristotle failed to notice they conflict, for at crucial points his ethics and politics

overlap. The overlap is substantial in book V of the *Nicomachean Ethics*; in Aristotle's account of justice. Perhaps, then, we can find something there that will help us to decide which, if either, of these two explanations he presupposed. The first chapter, on general justice, is especially important, particularly the passage from 1129b31-1130a13, where justice is equated with law-abiding. The evidence there, though it admits of qualification, suggests that Aristotle favours a general obligation to obey the law, even in cases where the law is partial or ill-framed.

I shall focus on 7 claims, all of which appear plainly to support the authority of law. For each claim I discuss ambiguities that might allow a political autonomist a little room to plead a case, but I think it will become clear that the overall thrust of the passage is against it. The first claim comes at 1129a32-34:

> [1] the lawless man is thought to be unjust, so it is clear that the law-abiding man will be just.
>
> δοκεῖ δὴ ὅ τε παράνομος ἄδικος εἶναι ... ὥστε δῆλον ὅτι καὶ [ὁ] δίκαιος ἔσται ὅ τε νόμιμος ... (1129a32-34)

The main ambiguity here is whether, when Aristotle says "the law-abiding man will be just", he means that such a man will be just *because* he is law-abiding, or whether he is simply providing a way of recognising the just man, by reference to external actions.[50] If he means the latter, then his comment has no special implications for us. But if Aristotle is identifying the state of character, justice, with law-abiding, then, though he will not have given the just man's motive, he will still have given an explanation of what justice consists in. Law-abiding will be essential to justice, and this will favour the view that for Aristotle, political obligation is primary. The next claim fits rather well with this interpretation.

> [2] The just, then, is the lawful; the unjust is the unlawful.
>
> τὸ μὲν δίκαιον ἄρα τὸ νόμιμον ... τὸ δ' ἄδικον τὸ παράνομον ... (1129a34)

Here Aristotle shifts from masculine to neuter, from the just *man* to "the just". On the most natural reading of this claim, τὸ δίκαιον is equivalent to ἡ δικαιοσύνη. [51] In that case, Aristotle is saying that justice is essentially lawfulness, which goes a long way towards supporting the claims of authority. But it is just possible to take τὸ δίκαιον simply as "whatever is just" (e.g. this or that just deed), in which case the claim is at least consistent with individual autonomy (i.e. "anything that it is just to do is, *a fortiori*, lawful"). Although this second reading is somewhat strained, it must be conceded that

Aristotle does not use the abstract noun ἡ δικαιοσύνη again until the close of the present section, where he says that justice is complete virtue. Thus we have no way of being certain about the connection between τὸ δίκαιον and ἡ δικαιοσύνη in the local context; Aristotle might simply draw a conclusion about the virtue, justice, on the basis of what is evident in a typical just deed.

There is support for the first reading, however, in the phrase αὕτη μὲν οὖν ἡ δικαιοσύνη at 1129b25-26: "*this* justice", *viz.* law-abiding (see also 1130a8-9). And there is further evidence from chapter two that τὸ δίκαιον and ἡ δικαιοσύνη must indicate the same thing. At 1130b13, in the midst of an admittedly confused sentence,[52] we find the phrase καὶ τὸ ἄδικον καὶ ἡ ἀδικία ("the unjust and injustice [in the sense of the unfair]"[53]), where καὶ is most plausibly taken as exegetical, and the two terms are coordinate. Aristotle then immediately proceeds to speak about "*this* injustice" (note the phrase αὕτη ἡ ἀδικία), *viz.* injustice in the sense of the unfair, as parallel to justice (δικαιοσύνη) in the corresponding sense. Aristotle's view throughout the passage is that contraries have parallel properties (1129a17-18), and on that basis we may infer that if τὸ ἄδικον and ἡ ἀδικία are the same, then so are τὸ δίκαιον and ἡ δικαιοσύνη. It seems clear then, that in this passage Aristotle is saying that the virtue, justice, is essentially lawfulness. Let us turn to the third claim:

> [3] it is clear that all the lawful [deeds] are in a sense just [deeds]
>
> δῆλον ὅτι πάντα τὰ νόμιμά ἐστί πως δίκαια (1129b12)

With this comment, we shift attention a bit. Aristotle has already identified law-abiding as the essential feature of the virtue of justice. He now proceeds to spell out its chief implication, namely, that all lawful deeds are, in virtue of being lawful, also just deeds.[54] This suggests that laws have at least some authority over individuals. But what sort of qualification do we have in πως? Jackson thinks the qualification marks the difference between genuine justice and conventional justice. He remarks, "even οἱ κατὰ τὰς παρεκβεβηκυίας πολιτείας νόμοι, which are ἁπλῶς οὐ δίκαιοι are πὼς δικαιοι (i.e. even the laws of the illegitimate constitutions, which are not strictly just, are just in a sense). If he is right, then there is still room for a weaker interpretation of the passage, according to which an autonomous agent might, by acting in a way that was strictly just, not obey a law that was merely "in a way" just, e.g. by having been enacted according to a legally prescribed and accepted procedure. Stewart, however, says "πως" is added because all enactments are not just in the sense of aiming at the maintenance of ἰσότης. Many of them have no reference to the requirements of Particular Justice: they are just *in a certain sense — i.e.* they are just in the wide and loose sense, not

the narrow and technical sense."[55] I do not see that the text gives us enough information to settle the matter, but Stewart's suggestion at least has the merit of relying on the local context, whereas Jackson's suggestion relies on appeal to the *Politics.* [56] There is simply no discussion of the strictly just in *EN* V.1-2. The next claim carries even more weight:

> [4] for the things laid down by the legislative art are lawful and each of these, we say, is just.
>
> τά τε γὰρ ὡρισμένα ὑπὸ τῆς νομοθετικῆς νόμιμά ἐστι, καὶ ἕκαστον τουτων δίκαιον εἶναί φαμεν (1129b12-14).

On the most unforced reading of this claim, Aristotle is saying that laws established by correct legislative practice are not only lawful but just. The proponent of individual autonomy might object that we cannot be sure that νομοθετική is here used in a conventional sense. It might, so the objection goes, be used in an ideal sense, so that it should read "the things laid down by the *true* legislative art are *genuinely* lawful, and each of *these*, we say, is just." It seems to me that such platitudes better suit Aristotle's predecessor than Aristotle himself. But even so, the objection continues, we need to mind the qualification introduced by φαμεν. If Aristotle were to have said simply "the things laid down by legislators are lawful and each of these is just", then it would be clear where Aristotle stands on political obligation. But the qualification allows us to read him as saying "we [commonly] *say* that those things set down as lawful are just." It opens the door to claims that at least some legislation is unjust (and hence not obligatory). At this point it seems to me that such appeals to ambiguity and qualification are special pleading, and as we shall soon see, the plea cannot be carried through the remainder. Let us turn to the fifth claim.

> [5] the laws pronounce on all matters...
>
> οἱ δὲ νόμοι ἀγορεύουσι περὶ ἁπάντων, (1129b14-15)

This clause has often been taken to reveal Aristotle's "interventionist" tendencies,[57] and it is usually suggested that it anticipates X.9 1180a1 ff:

> But it is surely not enough that when they [sc. youths] are young they should get the right nurture and attention; since they must, even when they are grown up, practise and be habituated to them. We shall need laws for this as well, and generally speaking *to cover the whole of life*; for most people obey necessity rather than argument, and punishments rather than the sense of what is noble. (Ross translation, my emphasis)

If our passage is alluding to book X, then it suggests a new distinction: perhaps Aristotle is speaking of justice in a weak sense throughout V.1-2:

the justice that [he thinks] most people, including but not limited to women, children and slaves, are barely capable of, *viz.* law-abiding. And that is why in book X he says most people obey necessity rather than argument — because he wants to contrast this weak sense of justice (obedience) with the *strong sense* (action through choice and reasoned deliberation, cf. V.9 1136a1-5). If that is Aristotle's view, then he is likely to answer the question of political obligation in different ways for different sorts of people. For the many, the obligation to obey is absolute; but those with practical wisdom may do what the best argument bids.[58] There is nothing at all, however, in V.1-2 which prompts us to draw the distinction between weak and strong senses of justice. Indeed, the context is against it: Aristotle has just been speaking, in books III-IV of each of the several virtues in the strong sense (i.e. as involving choice and deliberation), and he begins book V by reminding us of this context: ἡ δὲ σκέψις ἡμῖν ἔστω κατὰ τὴν αὐτὴν μέθοδον τοῖς προειρημένοις ("our investigation will be according to the same method as in the foregoing [discussions]" 1129a5-6). So the passage at X.9 is appropriate to the context here.

So far, then, the passage in V.1 has provided no evidence that Aristotle favours individual autonomy in questions about justice and law-abiding. It is most plausibly taken as showing that Aristotle favours political obligation. If we continue one step, we find something more definite:

> [6] [the laws pronounce on all matters,] taking aim at the common advantage either of all or of the best or of those who hold power [according to virtue] or in some other such way, so that in one way we say just deeds are the things that make and secure happiness (and its parts) for the political community.
>
> [οἱ δὲ νόμοι ἀγορεύουσι περὶ ἁπάντων] στοχαζόμενοι ἢ τοῦ κοινῇ συμφέροντος πᾶσιν ἢ τοῖς ἀρίστοις ἢ τοῖς κυρίοις [κατ' ἀρετὴν] ἢ κατ' ἄλλον τινὰ τροπον τοιοῦτον· ὥστε ἕνα μὲν τρόπον δίκαια λέγομεν τὰ ποιητικὰ καὶ φυλακτικὰ εὐδαιμονίας καὶ τῶν μορίων αὐτῆς τῇ πολιτικῇ κοινωνία. (1129b15-19)

The admission that law is sometimes made with a view to the advantage of those who hold power, *combined* with the standing claim that justice is essentially law-abiding seems to imply a straightforwardly positivist account of justice.[59] Otherwise, why should it be just for anyone to contribute to the advantage of his/her rulers by obeying laws that were framed for that very purpose? This positivistic attitude about the law is further amplified in our last excerpt:

> [7] and the law orders us to do the deeds of a brave man—such as not breaking rank, or deserting, or throwing away one's armour—and the deeds of the moderate man—such as not committing adultery or being

wanton, and the deeds of the gentleman—such as not assaulting or slandering—and similarly for the other virtues and vices, bidding us to do the former and forbidding the latter; and the law rightly laid down does this rightly, but the hastily conceived law less well.

προστάττει δ' ὁ νόμος καὶ τὰ τοῦ ἀνδρείου ἔργα ποιεῖν, οἷον μὴ λείπειν τὴν τάξιν μηδὲ φεύγειν μηδὲ ῥιπτεῖν τὰ ὅπλα, καὶ τὰ τοῦ σώφρονος, οἷον μὴ μοιχεύειν μηδ' ὑβρίζειν, καὶ τὰ τοῦ πράου, οἷον μὴ τύπτειν μηδὲ κακηγορεῖν, ὁμοίως δὲ καὶ κατὰ τὰς ἄλλας ἀρετὰς καὶ μοχθηρίας τὰ μὲν κελεύων τὰ δ' ἀπαγορεύων· ὀρθῶς μὲν ὁ κείμενος ὀρθῶς, χεῖρον δ' ὁ ἀπεσχεδιασμένος. (1129b19-25, cf. 1130b23-24)

Note how far removed Aristotle is from speaking about an "unjust law". He does not even speak about laws "*incorrectly* laid down" as opposed to the ones which are correctly laid down, but only "hastily conceived" laws. He does not say of the hastily conceived law that it bids or forbids wrongly. The continuum of legislative value has only a positive side: from "rightly" to "less well". Yet we know from experience that hastily conceived laws often have highly undesirable consequences. And once again we may ask, unless Aristotle has a positivist conception of justice, why should it be just to obey these laws?

It seems then that the only consistent way of reading the whole passage from 1129b31-1130a13 is by taking Aristotle to be a positivist about justice. The essence of justice is law-abiding. Hence, all lawful deeds are just deeds. Hence, the things laid down by the legislative art are all just, whether they aim at the common advantage of all or of some other group, and whether they are rightly laid down or not. In that case, we have an answer to our question about political obligation. The priority of the city, which is elaborated in the *Politics*, but also anticipated in the *Nicomachean Ethics*, is more fundamental than individual autonomy.

It is possible to supplement this view, which might seem narrow-minded to some, with a pragmatic argument to the effect that Aristotle takes it to be consistent with an individual's best interest to observe a standing obligation to obey the law. The argument may be made in terms of Aristotle's views about how we learn to become practical; it adopts and then extends a view expressed by Sarah Broadie.[60] To begin with, we must consider the social conditions under which we become practical. Ordinary human beings are incapable of rearing themselves. They must absorb and approve at least some of the lessons of their elders and some of the customs of their society, in order even to survive. Among these lessons necessary for survival are the elements of social justice, for we must trust some others as acting for our sake, and doing so entails that we regard their interests. We "fashion ourselves by others, as they by us."[61]

This approach to becoming practical, which involves social justice, may be extended from the social to the political realm, by analogy. We know that Aristotle believes humans typically cannot achieve their end except in political society. Administering justice (a political function) is therefore necessary to the human good. Accordingly, a citizen is "one who has the power to take part in the deliberative or judicial administration of any state" (*Politics* III.1 1275b15). It is essential to Aristotle's political theory that the good man be not merely a good subject of his city, but that he take part in ruling. Only in the good ruler do political and human virtue fully coincide (*Politics* III.4 1276b17 ff.). The good citizen learns about how to become a good ruler through being ruled, and through being law-abiding. This is analogous to the way that a child learns to become practical by trusting a parent's advice about what to do. Even though it is obvious that the science of legislation is imperfect, prudence argues for the standing presumption that law-abiding will not only promote the interests of others, but also our own interests, because the laws represent views of how everyone should act. Thus, although Aristotle's claim that universal justice is law-abiding shows that he assumes citizens have an obligation to obey, the obligation is ultimately consistent with prudence.

There is not space to discuss this interesting argument further. It would explain how an autonomous moral agent could accept an obligation to obey the city's laws, even when they appear "hastily framed." But it will clearly run into problems where the analogy between the social and political breaks down.[62] And it does not address at all the question what one is to do when the laws appear grossly unjust.

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Endnotes

1. See Barker (1946:l): "The 'limit of state-interference' never suggested itself to the Greek philosophers as a problem for their consideration." And further on the same page: "But after all we do an injustice to the theorists of the city state if we compare them to the theorists of the great modern state." Barker saw correctly that the vocabulary of modern political theory, which derives primarily from Latin, tends to distort our view of the Greeks. His chapter on the vocabulary of the *Politics* gives a good summary of the differences between Aristotelian and modern political terms.

2. For autonomy, see *Politics* V.11 1315a6, cf. III.13 1284a13-14. The first passage is remarkable since it contains the only use of the term αὐτονόμος in Aristotle. In this context Aristotle anticipates Machiavelli in advising the despot to seem just and virtuous. He then claims that the despot should honour good men in such a way that they think they wouldn't be more honoured by autonomous citizens: τούς τε ἀγαθούς περί τι γιγνομένους τιμᾶν οὕτως ὥστε μὲ νομίζειν ἄν ποτε τιμηθῆναι μᾶλλον ὑπὸ τῶν πολιτῶν αὐτονόμων ὄντων. It seems clear that all that is implied here is a contrast between subjects and citizens, the latter who rule on their own behalf. The second passage bears this out. Aristotle speaks about monarchs of superior virtue: αὐτοὶ γὰρ εἰσι νόμος. Cole seeks to identify modern autonomy with Aristotle's αὐταρκεία, on which see below. For individual rights see Miller, 1995.

3. In Aristotle's metaphysics, of course, the concept of an individual is fundamental. But in his ethics and politics, Aristotle recognises that an individual is not "self-sufficient" (αὔταρκες). Thus he sometimes describes persons as belonging to the city rather than to themselves (see *Pol.* VIII.1 1337a26-27: ἅμα δὲ οὐδὲ χρὴ νομίζειν αὐτόν αὐτοῦ τινα εἶναι τῶν πολιτῶν, ἀλλὰ πάντας τῆς πόλεως). For this reason the Aristotelian city cannot be a mere aggregate of individuals. Evidently, Aristotle would not have agreed with Mill that, "the only freedom that deserves the name is that of pursuing our own good in our own way" (*On Liberty,* Chapter 1).

4. The verb δέω appears only once in the *Nicomachean Ethics*, at 1159a21.

5. Barker (1946:lxiii).

6. Sophocles, *Antigone* 450-459. Translation: Elizabeth Wyckoff, in Green and Lattimore (1960).

7. Sophocles, *Antigone* 663-674. Translation: Wyckoff.

8. For example, see Nussbaum (1986:302).

9. It is hard to miss, in fact, even at the beginning of the *Iliad*, where Achilles questions Agamemnon's authority.

10. The examples that follow are all summarised in Sorabji (1990:274-6).

11. Theodorus: one should take the cosmos as one's country (DL 2, 98-99); Aristippus "prized freedom and avoided ruling or being ruled by being a foreigner wherever he went" (Xenophon, Mem. II 1,13); Zeno: "we should not reside by cities or parishes, each distinguished by its own system of right and wrong." (Plutarch, Alex. Fort. 329a-b); Ariston: "by nature we have no fatherland" (Plutarch, De Exilio, 600e).

12. Zeller (1897:ii 224-6)

13. Allen (1964:61)

14. Miller (1995:)

15. See *EN* II.4 1105a31-33, where Aristotle states the necessary and jointly sufficient conditions for virtuous actions: πρῶτον μὲν ἐὰν εἰδώς, ἔπειτ' ἐὰν προαιρούμενος, καὶ προαιρούμενος δι' αὐτά, τὸ δὲ τρίτον ἐὰν καὶ βεβαίως καὶ ἀμετακινήτως ἔχων πράττῃ ("First he must do them knowingly, second he must do them by choice and choosing them for their own sake, and third he must do them having a firm and unchanging state.") Now the first condition, Aristotle says, counts for little or nothing, but the other two are "all-important" (πᾶν δύναται). But these two conditions appear incompatible with one another. According to condition [2] each action must be decided on (cf. δι' αὐτά), but condition [3] implies that his actions will be determined by his character. Aristotle later responds to this puzzle by claiming that ἕξεις, rather than the πράξεις are directly chosen, and the actions are prohairetic in the sense that they stem from corresponding characters (see III.5 1114a3-20). But this only raises further complications: a ἕξις is produced by habituation from an early age, and it is particularly the legislators who are concerned "to make citizens good by habituation" (II.1 1103b3-4).

16. See the discussions in *EN* III. and VI.2

17. A note of caution: at the beginning of *EN* VI.8 Aristotle says: : Ἔστι δὲ καὶ ἡ πολιτικὴ καὶ ἡ φρόνησις ἡ αὐτὴ μὲν ἕξις, τὸ μέντοι εἶναι οὐ ταὐτὸν αὐταῖς ("Political [science] and prudence are the same condition, but their being is not the same")!

18. See also *EN* VI.7 1141b10: τοῦ γὰρ φρονίμου μάλιστα τοῦτ' ἔργον εἶναί φαμεν, τὸ εὖ βουλεύεσθαι ("for we say this is especially the function of the sage: to deliberate well"). I insert the word "only" because it is clear from the discussion in chs. 8-9 that Aristotle thinks excellence in deliberation, and practical wisdom, are concerned with both particular actions as well as the good life (see 1142a24030, 1142b28-33).

19. See Barnes (1990:252).

20. It is interesting to follow out the consequences of this for the virtue of courage. In ch. 7 Aristotle says repeatedly that the brave man acts from a noble object (e.g. καλοῦ δὴ ἕνεκα ὁ ἀνδρεῖος ὑπομένει καὶ πράττει τὰ κατὰ τὴν ἀνδρείαν, 1115b23-24; see also ὅτι καλόν 1116a11, 1117b9).

21. See Barnes (1990:252).

22. Cole (1990).

23. See *GA* 732a17

24. See *GA* 776b8

25. See *De Incessu Animalium* 708a25.

26. Heat for example, See *Problemata* 880a15

27. See *Topics* 102a17, cf. 150b23

28. See *De Mundo* 396a13

29. *EN* X.6 1169b6, see also *Rhetoric* I.5 1360b14

30. See *Metaphysics* XIV.4 1091b17-19, where "good is self-sufficient" is treated as analytic (ἀλλὰ μὴν οὐ δι' ἄλλο τι ἄφθαρτον ἢ διότι εὖ ἔχει, οὐδ' αὐταρκες, "but indeed a thing can be for no other reason imperishable or self-sufficient than because it is good.") See also *Rhetoric* I.6 1362a27: τοῦτό <γάρ> ἐστιν ἑκάστῳ ἀγαθόν, καὶ οὗ παρόντος εὖ διάκειται καὶ αὐτάρκως ἔχει ("for this is good in each [case]: namely, that which, by its presence, makes a thing noble and self-sufficient").

31. See *EN* IV.3 1125a12

32. See *EN* VIII.9 1160b4

33. See *EN* X.8 1177a27, cf.1177b1, 1177b22

34. See *EN* IX.9 1169b5

35. See *EN* IX.9 1169b5 ff.

36. See *EN* IX.9 1169b6, X.8 1178b34, Politics 1253a26-28.

37. See 1291a10 (αὐτάρκης γὰρ ἡ πόλις), 1275b21, 1321b17, 1326b3-24, 1328b17

38. See 1252b29, 1261b11

39. See 1280b34

40. He does sometimes say the city or community is self-sufficient for life (ζωῆς) but whose life? Since the city is treated as an organism, we have to take seriously the possibility that Aristotle meant its life, rather than the lives of individuals.

41. εἰ γὰρ καὶ ταὐτόν ἐστιν ἑνὶ καὶ πόλει, μεῖζόν γε καὶ τελειότερον τὸ τῆς πόλεως φαίνεται καὶ λαβεῖν καὶ σῴζειν· ἀγαπητὸν μὲν γὰρ καὶ ἑνὶ μόνῳ, κάλλιον δὲ καὶ θειότερον ἔθνει καὶ πόλεσιν (1094b7-10).

42. On this compare Antiphon, DK 87 B44 "the laws make pronouncements about what the eyes should and should not see, what the ears should and should not hear," etc.

43. See *Politics* I.2 1253a18-29.

44. Miller (1995:205). Miller argues that we cannot take the analogy seriously because it implies that individuals cannot exist apart from the polis, which is "transparently false". But Aristotle does not say that individuals cannot exist outside the city, only that human beings *qua* human cannot, and that is not transparently false.

45. ἅμα δὲ οὐδὲ χρὴ νομίζειν αὐτόν αὐτοῦ τινα εἶναι τῶν πολιτῶν, ἀλλὰ πάντας τῆς πόλεως, 1337a27-28. I was alerted to this passage by Barnes (1990:262-263). Barnes points out that elsewhere Aristotle describes a free man as αὑτου φύσει (*Politics* I.4 1254a14, by contrast to a slave, who is ἄλλου) and αὑτου ἕνεκα καὶ μὴ ἄλλου (*Metaphysics* I.2 982b 25-26).

46. Barnes (1990: 259).

47. These examples are adumbrated in Barnes (1990:259)

48. For the sake of brevity I have expressed the examples generally. But so expressed they may not appear so "totalitarian". Except for the first and last group, similar kinds of laws may be found in nearly all liberal democracies. When one looks at the specific recommendations Aristotle makes, considerable impositions on individual liberties are obvious. But even in their general expression, these sorts of laws are decried by libertarians.

49. I think this is what D. J. Allen (1964:57) means when he says that "instances will only serve to confirm what has otherwise been established."

50. D. J. Allan argues that the passage is carefully constructed to avoid speaking about "virtuous action in the full and proper sense", but addresses only "the external actions of virtue irrespective of the motive" (1964:64; cf. 65-69).

51. See Stewart (1892: 407), who argues that the two terms differ only "as notion and state."

52. See Stewart (1892:406-409), who says, "there is perhaps no place in the E.N. where the MSS. show so much confusion as they do here" (408).

53. Following Ross.

54. The plural πάντα τὰ νόμιμα shows that Aristotle is not speaking about ideal lawfulness.

55. See Stewart (1897:389) Stewart argues that the qualification implied by πως is revealed by the text at 1129b17: ὥστε ἕνα μὲν τρόπον δίκαια λέγομεν τὰ ποιητικὰ καὶ φυλακτικὰ εὐδαιμονίας καὶ τῶν μορίων αὐτῆς τῇ πολιτικῇ κοινωνίᾳ. ("so that one way we speak of just things is as what produce and preserve happiness and its parts for the political community"). He suggests that ὥστε ἕνα μὲν τρόπον is answered at the beginning of chapter 2 by Ζητοῦμεν δέ γε τὴν ἐν μέρει ἀρετῆς δικαιοσύνην· ἔστι γάρ τις, ὡς φαμέν ("But we are seeking justice which is a part of virtue, for there is a [justice of this kind; Ross], as we say"), so the contrast is between general and particular justice. Stewart's view that we should look in the immediate context, if anywhere, for clarification of πως is sound, and his appeal to the text as 1129b17 is plausible. But the contrast ὥστε ἕνα μὲν τρόπον—Ζητοῦμεν δε is opposed by Jackson (1879:69) who thinks ὥστε ἕνα μὲν τρόπον is answered by the immediately following προστάττει δ' ὁ νόμος καὶ τὰ τοῦ ἀνδρείου ἔργα ποιεῖν, etc. ("but the law commands also the acts of a brave man", etc.).

56. See Jackson (1879:69). Jackson cites *Politics* III.11 (1282b12) in support.

57. See Stewart (1897:389-90)

58. For a discussion of different implications of the passage at *Politics* X.9, see D. J. Allan (1964:72-78).

59. The text is admittedly questionable; see Stewart (1897:390-91), Jackson (1879:69). But even if κατ' ἀρετὴν is retained, all are in agreement that the contrast is between τοῦ κοινῇ συμφέροντος and the advantage of the various rulers of the παρεκβάσεις. And Aristotle reiterates the point a little later when he says, echoing Thrasymachus, that justice is "another's good" because it does what is advantageous to another, *whether that person is a member of the community* (κοινωνῳ 1130a5 cf. τοῦ κοινῇ συμφέροντος 1129b15) *or a ruler* (ἄρχοντι 1130a3-5, cf. κυρίοις 1129b16).

60. See Broadie (1991:114-118). The first part of the argument, about social justice, is meant to be simply a summary of Broadie's view; the second part, about political justice, is an extension of it.

61. Broadie (1991:117).

62. Broadie herself only uses the argument to ground the elements of social justice. She explicitly states that an argument like this cannot "ground a system of rights and duties" because it can "supply no principle for determining who should fall within the circle of those with whom the ethically developing individual stands" (1991:117-118).