**ARISTOTLE ON LAW**

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Few writers have more eloquently and convincingly defended the rule of law than Aristotle and the concept of law (nomos) plays a central role in his political thought. Law is important by virtue of the fact that men are by nature political animals, and to fulfill this nature they must regulate their affairs with laws. Also, men are rational, and this rationality expresses itself in men's capacities to formulate and abide by their laws.

Despite its importance in the political thought of Aristotle, his conception of law has not received sufficient study. Many discussions of his legal ideas have taken place primarily within the context of the Greek, or more specifically, the Athenian conception of law. J. Walter Jones, for example, in his valuable study of Greek law has extensive references to Aristotle's conception of law but these are used to shed light on the more general conception of Greek law. Barker's short discussion of Aristotle's conception of law in his translation of the *Politics* emphasises the importance of custom. This emphasis on custom is not distinctive of Aristotle's thought but of Greek law in general. An understanding of the Athenian conception of law is, of course, essential for understanding Aristotle; but nevertheless not enough has been said about Aristotle's contribution to the Athenian legal tradition.

A number of other studies of Aristotle's legal ideas have focused primarily on justice. There has even been a tendency to identify the lawful and the just. Sir Ernest Barker, for example writes,

> The natural character of the law precludes any distinction between what is legally just, and what is naturally just: to Aristotle, as to Socrates, the Legal and the Just are one.

While Aristotle did assert that the just was 'in a sense' what is lawful, he clearly distinguished between them. There is in Aristotle's political thought a notion of law which is quite distinct from justice. This is not to say that for Aristotle justice is irrelevant for law. Justice is a standard for law, but a law does not have to be just to be a law.

The relationship between legality and justice raises the more general question of which characteristics are essential for law. Aristotle links law with, among other things, what is rational, sovereign, general, and
compulsory. One or more of these characteristics have been identified by other legal traditions as of the very nature of law. For example, the natural law tradition, as represented by Saint Thomas Aquinas, considers rationality to be essential to law. Whatever is contrary to reason cannot be law. On the other hand, the modern positivist tradition, as represented by Hobbes and Austin, has emphasised the sovereignty and compulsoriness of law. For Aristotle, which of the above characteristics are essential and which merely desirable? Can Aristotle be placed in either the natural law or the positivist tradition? Many scholars have supposed that Aristotle's legal ideas fit into either the natural law or positivist legal traditions. Von Leyden and Barker, for example, place Aristotle in the natural law tradition; and Anton-Hermann Chroust emphasises the positivist elements of Aristotle's conception of law. In what follows, I argue that neither classification is correct, for Aristotle was neither a proponent of natural law nor a positivist. This point will emerge as I separate what for Aristotle are the essential from the merely desirable elements of law. I shall begin with a brief discussion of the Athenian conception of law before considering his legal typology to show that although some Aristotelian concepts are found in the natural law tradition, he himself did not develop a theory of natural law. Finally, I shall distinguish between those characteristics of law which are essential and those which are merely desirable. Aristotle held that generality and authority are defining characteristics, of law, whereas rationality and justice are only desirable. He never argued that a law must be rational and just to be a law. I shall consider his scattered discussions of law in the Politics, Nichomachean Ethics, Rhetoric and Constitution of Athens.

The Athenian 'Nomos'

The Greek term often translated as 'law,' nomos, is related etymologically to nomizein (to believe) and nemein (to apportion or distribute). This suggests, first, that nomos is something believed in or generally held to be right. Regarding its relationship to nemein, for something to be apportioned, there must be an apportioner. An acting subject (or subjects) is presupposed; that is, some agency is required to make something a law. Law is an apportionment or enactment generally believed to be right. The idea of agency does not necessarily imply that nomoi are imposed from above, for the etymological relationship between nomos and nemein does not tell us the nature or source of the law-making process.