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Justice as Lawfulness and Equity as a Virtue in Aristotle's *Nicomachean Ethics*

James W. Guest II

Abstract: This essay examines Aristotle's account of justice as a virtue in the *Nicomachean Ethics* by considering two related parts of it: Aristotle's elevated account of justice as lawfulness and his description of equity as a virtue. I focus on moral rather than legal questions by emphasizing Aristotle's identification of justice as lawfulness with complete virtue, and a broad sense of equity as superlatively good character. Some of the more difficult passages in book 5 prove to be tied together by the question of the goodness of justice and I argue that Aristotle points to a specific confusion in this regard characteristic of virtuous people. I conclude that Aristotle's critique of our ordinary opinions about justice offers crucial, albeit limited, support for the superiority of the contemplative life announced at the end of book 10.

Aristotle's inquiry into the human good in the *Nicomachean Ethics* devotes more attention to justice than to any other virtue and his account of it concludes his discussion of the moral virtues. Yet the book on justice has proved unusually difficult to understand.[1] In book 5 Aristotle introduces a

James W. Guest II is an unaffiliated scholar. He holds a doctorate from the University of Dallas.

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[1]Salem remarks that book 5 is "easily the most confusing book in the *Ethics*" (Eric Salem, *In Pursuit of the Good: Intellect and Action in Aristotle's Ethics* [Philadelphia: Paul Dry Books, 2010], 72). Pakaluk quips that one could say, "somewhat perversely, that Aristotle's definition boils down to: 'Justice is seeking justice with justice'" (Michael Pakaluk, *Aristotle's "Nicomachean Ethics": An Introduction* [New York: Cambridge University Press, 2005], 182). Burger supplies a chart intended to help the reader keep straight the manifold distinctions among the forms of justice (Ronna Burger, *Aristotle's Dialogue with Socrates: On the "Nicomachean Ethics"* [Chicago: University of Chicago Press, 2008], 223–24). Kraut lists a number of reasons a reader might be dissatisfied by book 5 with a view to responding to them in the rest of his chapter (Richard Kraut, *Aristotle: Political Philosophy* [New York: Oxford University Press, 2002], 98–101).

staggering number of distinctions: justice as lawfulness, justice as fairness or equality (which has distributive and corrective forms), a related form of justice as reciprocity, political justice (which has natural and conventional parts), equity as a kind of justice, and more.[2] The way interpreters handle the challenges of book 5 often reflects their approach to a more fundamental debate concerning the relationship between moral and contemplative virtue.

The conclusion of the *Nicomachean Ethics* is a cause of enduring perplexity. For more than fifty years now, scholars have debated whether Aristotle's description of happiness is an "intellectualist" or an "inclusivist" account. The first view, which is usually admitted to be the more obvious one, is that Aristotle thinks a happy life is ordered with a view to contemplative activity as a dominant end (*Nicomachean Ethics* 1178a4–8; 1178b7–8, 28–32).[3] But the strongest evidence for this view is almost entirely contained in a handful of chapters for which the rest of the work seems to leave readers unprepared.[4] For if it is true that complete happiness consists in contemplative activity alone, then prudence and the moral virtues would have to be regarded as instrumental or incidental to it rather than regarded as ends that are noble and choiceworthy for their own sake, as the rest of the work had maintained (1105a28–33, 1115b11–13, 1120a23–24,

[2]Most interpreters focus on what they take to be Aristotle's struggle in *NE* 5.1–5 to make justice conform to his understanding of virtue as a mean (Ron Polansky, "Giving Justice Its Due," in *The Cambridge Companion to Aristotle's Ethics*, ed. Ron Polansky [Cambridge: Cambridge University Press, 2014], 151–79; Pakaluk, *Aristotle's "Nicomachean Ethics"*; Kraut, *Aristotle: Political Philosophy*; Howard Curzer, "Aristotle's Account of the Virtue of Justice," *Apeiron* 28, no. 3 [1995]: 207–38; Bernard Williams, "Justice as a Virtue," in *Essays on Aristotle's Ethics*, ed. Amélie Oksenberg Rorty [Berkeley: University of California Press, 1980], 189–99; Hans Kelsen, "Aristotle's Doctrine of Justice," in *What Is Justice? Justice, Law, and Politics in the Mirror of Science: Collected Essays* [Berkeley: University of California Press, 1957], 110–36). Others take Aristotle to be pointing to the limits of justice as a mean condition (Aristide Tessitore, *Reading Aristotle's "Ethics": Virtue, Rhetoric, and Political Philosophy* [Albany: State University of New York Press, 1996]; Susan Collins, *Aristotle and the Rediscovery of Citizenship* [New York: Cambridge University Press, 2006]; Burger, *Aristotle's Dialogue with Socrates*).

[3]This is the position held by W. F. R. Hardie, who introduced the terms of the debate in *Aristotle's Ethical Theory* (Oxford: Clarendon, 1968), 23. See also Richard Kraut, *Aristotle on the Human Good* (Princeton: Princeton University Press, 1989) and Gabriel Richardson Lear, *Happy Lives and the Highest Good* (Princeton: Princeton University Press, 2004). In-text citations of the *Nicomachean Ethics* refer to Aristotle, *Ethica Nicomachea*, ed. Ingram Bywater (Oxford: Oxford University Press, 1894).

[4]See John Cooper, *Reason and Human Good in Aristotle* (Cambridge, MA: Harvard University Press, 1975), 104–5, 113; and Christopher Bruell, "Aristotle on Theory and Practice," in *Political Philosophy Cross-Examined: Perennial Challenges to the Philosophic Life*, ed. Thomas L. Pangle and J. Harvey Lomax (New York: Palgrave Macmillan, 2013), 17–28, particularly 20–22.

1140b6–7).[5] Thus others have proposed that Aristotle must instead have an "inclusive" account of happiness, in which a plurality of intrinsically valuable ends together belong to a happy life, perhaps in a hierarchy.[6] This approach has nevertheless been hard to square with the explicitness of the conclusion (1177b1–2, for example). In recent years the terms of the debate have become so technical—and, one might add, removed from the kind of ordinary moral experience from which Aristotle begins—that some have begun to wonder whether the distinction between "intellectualist" and "inclusive" readings has outlived its usefulness.[7] Yet no consensus has been achieved concerning the relative place or rank of moral virtue and contemplative activity (to say nothing of pleasure) in a happy life.

This impasse in the scholarship helps make plausible one or another version of the view that Aristotle's political writings are intended to speak to multiple audiences in multiple ways for multiple reasons.[8] These arguments hold that Aristotle's conclusion regarding the superiority of the

[5]J. L. Ackrill ("Aristotle on *Eudaimonia*," in *Essays on Aristotle's Ethics*, 15–33) avers that a denial of the independent or intrinsic value of moral action must have "monstrous" consequences (32); similarly Cooper, *Reason and Human Good*, 106–7, 149–50.

[6]Ackrill ("Aristotle on *Eudaimonia*") and Thomas Nagel ("Aristotle on *Eudaimonia*," in *Essays on Aristotle's Ethics*, 7–14) are important examples. A few scholars do not accept either position. Carlo Natali (*The Wisdom of Aristotle*, trans. Gerald Parks [Albany: State University of New York Press, 2001]), for example, argues that Aristotle would not recognize the distinction between these two interpretations because he has a view that coherently includes components of both. Pakaluk thinks Aristotle appears to hold both of the major positions, but in a hierarchy; not without reason, he finds this result "disappointing" (Pakaluk, *Aristotle's "Nicomachean Ethics,"* 329). See also C. D. C. Reeve, "Beginning and Ending with *Eudaimonia*," in *The Cambridge Companion to Aristotle's "Nicomachean Ethics,"* ed. Ronald Polansky (Cambridge: Cambridge University Press, 2014), 15–33.

[7]A. A. Long, "Aristotle on Eudaimonia, Nous, and Divinity," in *Aristotle's "Nicomachean Ethics": A Critical Guide*, ed. Jon Miller (Cambridge: Cambridge University Press, 2011), 92–114; and Norman O. Dahl, "Contemplation and Eudaimonia in the *Nicomachean Ethics*," in *Aristotle's "Nicomachean Ethics": A Critical Guide*, 66–91.

[8]For example: Tessitore, *Reading Aristotle's "Ethics"*; Lorraine Pangle, *Aristotle and the Philosophy of Friendship* (Cambridge: Cambridge University Press, 2003); Collins, *Rediscovery of Citizenship*; Burger, *Aristotle's Dialogue with Socrates*; Thomas L. Pangle, *Aristotle's Teaching in the "Politics"* (Chicago: University of Chicago Press, 2013). See Arthur M. Melzer, *Philosophy between the Lines: The Lost History of Esoteric Writing* (Chicago: University of Chicago Press, 2014), 30–46 for copious ancient testimony concerning Aristotle's "artful obscurity." Entering into the disagreements about Aristotle's audience and manner of writing is beyond the scope of this paper, though I briefly characterize my view of the primary audience below. I have benefited most from Bruell ("Theory and Practice," 17–20), who sharply outlines the paradoxical character of Aristotle's inquiry. See also Robert C. Bartlett, "Aristotle's Introduction to the Problem of Happiness: On Book I of the *Nicomachean Ethics*," *American Journal of Political Science* 52, no. 3 (2008): 677–87, and T. Pangle, *Aristotle's Teaching*, 1–24.

contemplative life rests, at least in part, on a critique of the moral or political alternative. Ronna Burger, for example, argues that Aristotle's work takes into account readers who are not simply satisfied with "the that" of noble and just things as the political community holds them (1094a26–b7), but are seeking or can be brought to seek "the why" of them (1095a28–b13).[9] Aristotle's route toward genuine knowledge of virtue is not a direct one. As Burger continues, "if the inquiry is meant to appeal to, or even arouse, desire for 'the why,' it must be prepared to bring to light the limitations, partial perspectives, or internal contradictions of the opinions assumed at the beginning—while trying to disturb as little as possible those satisfied with that starting point."[10] On this basis, justice is worthy of particular attention because of its pride of place in Aristotle's political philosophy. The fundamental problem of distributive justice, for example, which directly links the *Nicomachean Ethics* and *Politics* (1131a21–28; *Politics* 1280a7–20, 1282b14–23), has been well covered by others.[11] This essay seeks to contribute to a fuller understanding of Aristotle's account of justice by attending closely to the sections that begin and end book 5: Aristotle's elevated account of justice as lawfulness and his description of equity as the virtue which corrects the necessarily imperfect character of law.

While law and equity are usually studied with a view to legal questions (Is an equitable departure from an existing law legal?) or practical questions (How exactly does a judge determine the equitable thing in a given situation?), my approach remains close to lawfulness and *epieikeia* (equity or decency) as aspects of moral character.[12] I foreground the sense in which justice as lawfulness aims at a truly common good through the use of complete virtue and the sense in which decency indicates good character in general—senses that, at first glance, seem to have little to do with justice as a particular virtue but to which Aristotle himself draws attention. Following his indications, I have made a novel effort to situate Aristotle's discussion of *epieikeia* in its notoriously tangled and frequently neglected context.[13] Others have noticed that Aristotle tacitly refers to Thrasymachus's

[9]Burger, *Aristotle's Dialogue with Socrates*, 17–21.

[10]Ibid., 20–21; see also Bruell, "Theory and Practice," 19–22, 27.

[11]Citation of the *Politics* refers to Aristotle, *Politica*, ed. W. D. Ross (Oxford: Oxford University Press, 1957). On the problem of distributive justice, see note 23 below.

[12]Contrast Martha C. Nussbaum, "Equity and Mercy," *Philosophy & Public Affairs* 22, no. 2 (1993): 83–125; Roger Shiner, "Aristotle's Theory of Equity," *Loyola of Los Angeles Law Review* 27, no. 4 (1994): 1245–64; and Eric G. Zahnd, "The Application of Universal Laws to Particular Cases: A Defense of Equity in Aristotelianism and Anglo-American Law," *Law and Contemporary Problems* 59, no. 1 (1996): 263–95.

[13]Let me assert that book 5 has two halves, each with two sections: 5.1–2, 5.3–5; 5.6–8, 5.9–11. Thornton Lockwood ("Ethical Justice and Political Justice," *Phronesis* 51, no. 1 [2006]: 29–48) and Charles M. Young ("Aristotle's Justice," in *The Blackwell Guide to Aristotle's "Nicomachean Ethics,"* ed. Richard Kraut [Malden, MA: Blackwell

critique of the goodness of justice.[14] Because his uncharacteristically mathematical treatment of justice seems so distant from the concerns animating the youths in Plato's *Republic*, however, Aristotle's own challenging insights into the moral psychology of justice have remained relatively unexplored.[15] I begin by examining how justice first appears as a truly common good in Aristotle's elevated treatment of justice as lawfulness, and I suggest that Aristotle also indicates that virtuous people's opinions about the goodness of justice waver (5.1–2). Second, I note some important changes in Aristotle's presentation of justice that emerge in the next two sections (5.3–5 and 5.6–8) and which call our attention again to the question of the goodness of justice. Third, I closely examine Aristotle's account of equity and the impasses related to it with a view to this question. These impasses broadly concern whether it is possible to suffer injustice voluntarily. Taken together with some puzzling and neglected features of the chapter on equity, Aristotle's responses point to a specific confusion in the self-understanding of virtuous people. I conclude that because equity is a form of justice, because justice is in one sense the whole of virtue, and because virtue is the end of politics as Aristotle's primary audience understands it, Aristotle's delicate critique of justice offers crucial, albeit limited, support for the superiority of the contemplative life announced at the end of book 10.

Publishing, 2006], 179–97) make some helpful observations about the order of subjects in 5.6–11. As far as I have observed, commentators who spend more than two or three pages on 5.6–11 usually do so only to dwell on natural right (5.7) or decency (5.10) in isolation. I differ from Tessitore (*Reading Aristotle's "Ethics,"* 38–42), who argues that the second half contains three "waves" of arguments *against* the teaching of the first half, as well as from Polansky ("Giving Justice Its Due"), who argues that these chapters are largely a rigorous *defense* of the teaching of the first half. I will argue that the question of the goodness of justice runs through the whole of book 5.

[14]F. Rosen, "The Political Context of Aristotle's Discussion of Justice," *Phronesis* 20, no. 3 (1975): 228–40; Wayne Ambler, "Aristotle and Thrasymachus on the Common Good," in *Action and Contemplation: Studies in the Moral and Political Thought of Aristotle*, ed. Robert C. Bartlett and Susan D. Collins (New York: State University of New York Press, 1999), 249–271 (Ambler limits his discussion to *Politics* 3); Collins, *Rediscovery of Citizenship*, 70–71.

[15]Lear (*Happy Lives and the Highest Good*, 148), for example, passes over justice entirely: "Unlike his discussions of other moral virtues, Aristotle is more interested in mapping the structure of just actions themselves than in describing the psychology of the person who acts from justice." Lear is sharply focused on the centrality of the fine (noble, *kalon*) to Aristotle's account of virtue, and that centrality is nearly absent in book 5. I will argue, however, that Aristotle's single reference to nobility as an end of just action is therefore of crucial significance.

Justice as Lawfulness and a Truly Common Good

Aristotle's discussion of the human good arrives in its early stages at the proposal that happiness is "an activity of the soul in accord with virtue, and if there are several virtues, then in accord with the best and most complete one," and this "in a complete life" (1098a14–18).[16] Justice is one of two moral virtues that is said to be complete (1129b25–1130a13). The other moral virtue said to be complete is greatness of soul, "a kind of ornament of the virtues" that makes them greater and does not arise without them (1124a1–3). But whereas the great-souled man takes his bearings by his own virtue and is "necessarily incapable of living with a view to another (except a friend)," justice is the virtue which uses the whole of virtue with a view to others, and especially those who are other than one's own (compare 1125a1–2 with 1129b26–27; see also 1108b6–9). Greatness of soul presents a portrait of the activity of complete virtue understood as choiceworthy for its own sake, while justice shows us the use of such virtue for the benefit of the political community. As Aristotle says at the outset of the work, attaining the good for one individual is no small thing, but "to do so for a city or nation is nobler and more divine, for the good of the city is greater and more complete" (1094b7–10). This thought is given its fullest expression at the beginning of book 5.

Justice first comes to sight as the lawful—"everything lawful is somehow just" (1129b12).[17] This is so, in part, to the extent that law aims at the common advantage: "we say that those things apt to produce and preserve happiness and its parts in the political community are in a manner just" (1129b11–19). If happiness consists above all in morally virtuous activity, then we share in this common advantage to the extent that law teaches us to practice the whole of virtue and orders public education with a view to that end (1129b19–25, 1130b20–26). This justice is "the most complete virtue" because it is the use of complete virtue in relation to the political community as a whole (1129b29–30)—as Bias said, "office will show the man" (1130a1–2). Because it is the virtue concerned primarily with others, justice "alone" is held to be "another's good" (1130a3–4). Here Aristotle tacitly refers for the first time to the Thrasymachean critique of justice.[18] Contrary to Thrasymachus's thesis that the just naively serve the good of others and are taken advantage

[16]Quotations are from Aristotle, *Nicomachean Ethics*, trans. Robert C. Bartlett and Susan D. Collins (Chicago: University of Chicago Press, 2011).

[17]Commentators as different as Yack and Kraut suggest that Aristotle means by this that any order is preferable to none (Bernard Yack, *The Problems of a Political Animal: Community, Justice, and Conflict in Aristotelian Thought* [Berkeley: University of California Press, 1993], 106; Kraut *Aristotle: Political Philosophy*, 106). But Aristotle may also intimate that some sense of ourselves as law-abiding is essential to our happiness both as individuals and as members of the political community.

[18]Plato, *Republic* 343c–d and context.

of by the powerful, Aristotle exhorts us to hold that the difficult task of securing another's advantage is what makes the just man the "best" of men (1130a3–8). The thought seems to be that justice is a truly common good: as the activity of complete virtue, justice is our own best condition; as that activity in relation to someone else, exercised most fully by those who hold authoritative offices, justice is good for the political community (1129b25–33). Living in accordance with its demands we find our complete good as political animals. From this point of view, justice and virtue are the same thing (1130a10–13). The argument of the *Nicomachean Ethics* thus peaks in this presentation of the just life of political activity as the core of happiness: "justice is often held to be the greatest of the virtues" (1129b27–29). But Aristotle himself never quite says this.

This vision is the culmination of Aristotle's articulation of the political and active life as, for the most part, virtuous people themselves understand it (1194b27–1195a11, 1195b4–13).[19] That life centers not on the accumulation of wealth, or the indulgence of pleasures, or even the attainment of great honors, but rather on virtuous activity itself (1095b14–1096a10 with 1097b34–1098a19). With respect to the greatest questions, the morally serious human being is assumed to be the self-evident standard (1099a22–24, 1113a25–33, 1166a12–13, 1170a14–16, 1176a15–16, and 1176b24–26). Justice as lawfulness is thus the culmination of the virtuous person's vision of the happiness of the political life and it provides a crucial contrast to the much-disputed conclusion concerning the happiness of the contemplative life that unexpectedly appears at the end of the work. One thing is clear: if justice and contemplative virtue are two different things (1138a19–20, b5–8), they cannot both be "greatest" (compare *kratistē* at 1129b27–28 with *kratistēn* at 1177a12–18). Aristotle's considered judgment about the goodness of justice is therefore of decisive importance for understanding his conclusion about human happiness.

There are clear indications from the beginning, however, that a coincidence between justice and happiness would be rare. At the end of this initial look at the two main senses of justice, Aristotle indicates that whether justice is a truly common good remains an open question. "As for the education for each person, as a result of which each is a good man simply, one ought to distinguish later whether it belongs to politics or some other discipline, for perhaps it is not the same thing to be a good man and a good citizen in every situation" (1130b26–29). Aristotle explicitly takes up this question only in the *Politics* (3.4–5), but he concedes here both that many regimes

[19]See Salem, *In Pursuit of the Good*, 49–50; Bartlett, "Problem of Happiness"; and Bruell, "Theory and Practice," 18–20. That this vision appeals to or is shared by Aristotle's audience is evident insofar as it is based on the things that "we say," "we declare," or "we hold," and—still more broadly—what "everyone wishes to say," about justice and injustice (see 1129a6, 26, 31; 1129b8, 14, 17, 28, 29; 1130a1 and 3 in 5.1 alone).

aim only at the common advantage of a part of the political community—the rulers—rather than at the whole of it, and that law will only cultivate complete virtue if the laws are set down rightly (1129b15–17, 24–25; see also 1102a7–10, 1103b2–6 and *Politics* 1279a17–21). When the law is defective in either of these respects, the connection between law, virtue, and happiness is not obvious, and the Thrasymachean suspicion can emerge that justice serves "someone else's good" at the expense of one's own (1130a3–5).

These practical defects, to which Aristotle briefly but explicitly points, are not the only ones he acknowledges. Beyond the limitations of the identification of justice and happiness in most if not all regimes, there are also some curious details in Aristotle's account that suggest that virtuous people themselves waver in their belief that virtue and happiness coincide in justice. For example, prior to distinguishing the two senses of justice in the opening chapters, Aristotle speaks broadly about the unjust person.

> Since the unjust person grasps for more [*pleonektēs*], he will be concerned with the good things—not all goods but so many as good fortune and misfortune concern, which are those that are always good unqualifiedly but not always good for a particular person. Yet human beings pray for and pursue these things, though they ought not; rather, they ought to pray that the things that are good unqualifiedly be good also for them, and they ought to choose the things that are good for them in fact. (1129b1–6)

Injustice as a particular vice consists in taking more than one's share of good things of this kind, but when Aristotle later refers to a collection of them—wealth, honor, and safety—he conspicuously refrains from referring to them as "goods" of any kind (1130b2–4: "or some one thing if we were able to encompass all these by a single name"). In so doing, Aristotle renders consistent the perspective that moral virtue is itself the highest good. If virtue and happiness strictly coincide, then pursuing additional "goods" when they come at the cost of our virtuous character would be either pointless or harmful. If such things are essentially means to some end, then the things in question are, strictly speaking, good only for those who use them virtuously or well (consider 1120a4–6, 1137a27–30; Plato, *Laws* 731b–d). Yet we rarely think about such goods this way, as is reflected in the account of particular injustice. It is assumed there that those who do injustice "gain" or "profit" on account of it, and the blame and punishment meted out by law frequently depends on that assumption (1130a24–28, 31–32; 1131b19–23; consider also 1132a9–19, 1132b11–16, 1134a1–6, and 1134a30–b1). Aristotle himself says only that the unjust person's pursuit of good things may "not always" be good for him (1129b4–6). Justice differs from the other virtues in part because it is inextricably bound up with external goods that we habitually consider in terms of gains and losses. Taking our eye off virtue and happiness, we therefore sometimes suspect that a thief who goes unpunished has gained something good. Yet even if our ordinary experience of the world does not support the belief that justice always meets with

prosperity and injustice with ruin, we are not thereby led to identify "successful" injustice with any *happiness* worthy of the name.

Presenting moral experience as exactly as possible, Aristotle indicates in this way that virtuous people are of two minds about the goodness and badness of justice and injustice, and it is surprising how common an experience this is once we begin to observe it in ourselves or others. On the one hand, justice appears to be a common good in which we experience the contribution of our own flourishing virtue to the happiness of the political community. On the other, unjust people seem to profit by obtaining a greater share of good things for themselves at the expense of others, and just or virtuous people sometimes experience service to others as burdensome and difficult rather than noble, pleasant, advantageous, and choiceworthy for its own sake (compare 1099a10–20). And yet, to repeat, we do not easily slip away from virtue on account of occasional doubts. "For while, as serious human beings, we regard it as incumbent on us to take in each case the just course rather than that which is most immediately advantageous to ourselves or to our own, we sense—even if we do not see it with perfect clarity—that the just course is the path on which happiness, too, is to be found."[20] At these moments, if the just life does not seem to *be* happy, it at least somehow *promises* happiness, and it is on this basis that we devote ourselves to it rather than to the pursuit of ephemeral goods. If happiness is indeed so complete that it is always chosen for itself and never on account of something else, and so self-sufficient that it renders us "in need of nothing," then perhaps it can never be simply identified with any mortal human activity (1097a32–34, b14–16).[21] But perhaps it is precisely this perceived gap between justice and happiness that makes the use of complete virtue in relation to another "a difficult task" met with great praise (1130a8 with 1105a9–10).

Particular Justice and the Concern for One's Own Good

Despite the qualifications mentioned, the core of Aristotle's introduction to justice is that justice as lawfulness is the grand embodiment of the moral vision of the political community and the guarantor of its happiness. But as

[20]Christopher Bruell, "Happiness in the Perspective of Philosophy," in *Recovering Reason: Essays in Honor of Thomas L. Pangle*, ed. Timothy Burns (Lanham, MD: Lexington Books 2010), 148. Consider in this light "through them" (*dia toutōn*) at 1097a35–b5 and "the prize of virtue" at 1099b16–20.

[21]See also Bartlett, "Problem of Happiness." In this connection, Aristotle's reference to prayer in the initial statement about injustice is as suggestive as it is unusual (1129b1–6). Is there a connection between the choices virtuous people make and the hopefulness characteristic of prayer? Consider also the remarks about Rhadamanthus and the Graces at 1132b21–1133a5 in which Aristotle emphasizes a certain hopefulness on account of gracious giving.

Aristotle turns to examine the second, narrower sense—justice as a particular virtue concerned with fairness or the equal—justice never again reaches those heights. By narrowing his focus, Aristotle exposes the seams in the unity of law, virtue, and happiness. Difficulties concerning distributive justice, corrective justice, and reciprocity and their importance have been discussed by others.[22] I will limit myself to observations about 5.3–5 and 5.6–8 that help draw out the question of the goodness of justice and set up a closer look at equity in 5.9–11.

Aristotle's articulation of the just as the fair or equal draws out the importance of distributing and receiving an equal share of the good things, and in particular a concern for obtaining one's own share of the good things. Unlike the other virtues, then, justice is about striking a balance between ourselves and others and it is not considered good simply because the practice of virtue is its own end. In the chapter on distributive justice, Aristotle begins to draw out this theme by alluding to the fundamental question of the regime and the dispute about who merits the ruling offices that dominates the third book of the *Politics*.[23] Aristotle asserts that the disputes characteristic of politics concern either equal people being distributed unequal things, or unequal people being distributed equal things. But instead of pursuing how such conflicts may be resolved, what political order best satisfies the claims to merit each party makes, or what role the rule of law may play in any solution, the point Aristotle underlines here is that "all agree that what is just in distributions ought to accord with a certain merit" (1131a22–29). Aristotle thus emphasizes an apparently universal connection between justice and claims of merit or desert.[24] Next, in the chapter on corrective justice, Aristotle brings the judge to the fore to rectify unequal distributions. As someone who wishes or is wished to be a sort of "ensouled justice," the

[22]See David Bolotin, "Aristotle on the Question of Evil," in *Action and Contemplation*, ed. Bartlett and Collins, 159–69; and Collins, *Rediscovery of Citizenship*, 71–80.

[23]This discussion of distributive justice is also Aristotle's most comprehensive reflection on the meaning and existence of the common good. David Keyt, "Supplemental Essay," in *Aristotle, Politics Books III and IV*, trans. Richard Robinson (Oxford: Clarendon, 1995), 125–48; Kraut, *Aristotle: Political Philosophy*, 357–84; Mary P. Nichols, *Citizens and Statesman: A Study of Aristotle's "Politics"* (Savage, MD: Rowman and Littlefield Publishers, 1992), 53–84; and Peter Simpson, *A Philosophical Commentary on the "Politics" of Aristotle* (Chapel Hill: University of North Carolina Press, 1998), 132–94 hold in various degrees that the good man and the good citizen coincide in the best regime. Ambler, "Aristotle and Thrasymachus"; Bolotin, "Question of Evil"; Bruell, "Theory and Practice," 23–26; Collins, *Rediscovery of Citizenship*, 119–46; and Pangle, *Aristotle's Teaching*, 121–65, argue in various ways that none of the claims to rule, even in the best regime, is simply just.

[24]Even the great-souled human being—the other peak of moral virtue—deems himself deserving of great things and claims the greatest of the external goods for himself: 1123b1–4, 17–20.

judge "tries" to equalize the "gain" and "loss" resulting from involuntary transactions (1132a4–12, 20–22). In both chapters, Aristotle therefore indicates that justice essentially involves giving and getting an equal share of disputed goods, and he highlights the just person's motivation not only to see that others get whatever they are due, but also to receive what is taken to be "one's own" or what one deserves (compare 1132a17–19 with 1132b16–18 and 1133b6–10; 1095b25–26).

The importance of obtaining good things for oneself is further underlined in the chapter on reciprocity. Although reciprocal exchange is very far from the practice of complete virtue in relation to another, the political community as a whole proves to be held together by it. "For either people seek to reciprocate harm for harm—if they do not, that is held to be slavish—or they seek to reciprocate good for good. And if they do not do this, there is no mutual exchange, and people stay together through mutual exchange" (1132b31–1133a2). In the mutual fulfillment of the basic needs of political order there remains a glimmer of a genuinely common advantage, although it is no substitute for the truly common good we hope to find in the practice of the whole of virtue (1133a26–28; compare 1133b5–7).

Although justice as lawfulness seeks to produce and preserve happiness for the political community, the addition in that formulation—happiness "and its parts"—takes on some substance in this section (1129b18). Law is not and cannot be concerned merely with virtue and happiness. It must also, for example, provide for the continued existence or survival of the city by taking a stand on fundamental conflicts about the meaning of merit in distributive justice; by addressing demands for restitution in cases of corrective justice that may be impossible to fully satisfy; and by introducing conventional practices in order to facilitate the reciprocal exchange that holds the political community together.[25] Throughout, Aristotle points to the moral psychology of just people in these circumstances: justice is bound up with claims of merit, and when we make our claims to an equal share, we are often seeking what we already take to be somehow "our own" and bound up with our character as virtuous human beings under the pressure of these conflicts and necessities. Beneath the mathematical formulas intended to identify "the equal" in distributive, corrective, or reciprocal transactions is the simple point that "the nature" of justice is to be morally disposed to

[25]Collins, *Rediscovery of Citizenship* (67–90, 119–46) and Bolotin, "Question of Evil," flesh out these tensions as they emerge in *NE* 5 and *Politics* 3. Bolotin is primarily concerned with the question of injustice. Collins focuses on the misalignment between the share of good things that is good for us as virtuous individuals and the just share according to the laws of a given regime. I am further investigating how it is that justice nevertheless appears to be somehow good for us, how it promises happiness, even or especially in such circumstances.

seek a proportionately equal share of what is choiceworthy both for others and for oneself (1134a1–6, 14–16).[26]

The second point to be made concerns a significant change in Aristotle's presentation of law at the outset of the second half of book 5, and the subsequent shift in focus from the general formulas of justice embodied in the laws to the particular choices just and unjust people make. Aristotle's turn appears abruptly:

> The just exists for those for whom there is also law pertaining to them, and law exists among those for whom there is injustice. … Among those for whom there is injustice, there is also the doing of injustice among them… and this is to distribute more of the unqualifiedly good things to oneself and less of the unqualifiedly bad than one ought. Hence we do not permit a human being to rule, but rather law, because a human being makes this distribution for himself and so becomes a tyrant. But a ruler is a guardian of the just, and if of the just, then also of the equal. For it seems he gains nothing for himself, if indeed he is just: he does not distribute more of what is unqualifiedly good to himself, unless it is proportional in relation to himself. Hence he labors for another, and on account of this, people declare that justice is the good of another, as was said also before. (1134a30–b6)

Aristotle explicitly calls our attention to the opening account of justice as lawfulness and once again subtly reminds readers of the critique of justice presented by Thrasymachus in the *Republic* (1130a3–5). The differences between these two statements are striking. In the earlier passage, the difficult task of serving someone else's good appeared to be part of what made justice so praiseworthy. But here the guardian of the just is thought to gain nothing at all, while those who commit injustice are presumed to profit by it (compare 1129b25–1130a8). Silent about the connection between lawfulness and complete virtue, Aristotle narrowly presents the function of law as nothing more than a necessary restraint on unjust grasping (*pleonexia*). Is justice such as this choiceworthy for its own sake? The guardian of the just himself appears to think not, and since he labors for another, "some wage, therefore, must be given to him, and this is honor and privilege. But those for whom these sorts of things are not sufficient become tyrants" (1134b6–8; compare *Politics* 1279a10–16). If the opening of book 5 is the peak of justice and lawfulness, this passage is its low point, for here justice seems

[26]This difference between justice and the other virtues is clear if we consider where Aristotle began: genuine courage is distinguished from merely political courage precisely in that genuine courage has the noble as its end, while political courage is directed toward the good of the city and aims at gaining honor or avoiding shame (1115b17–24, 1116a16–b3). Explicit concern for ends and goods external to virtue itself is constitutive of just actions, while such concern is somewhat concealed by considering the other virtues (almost) exclusively as choiceworthy for their own sake. See also Collins, *Rediscovery of Citizenship*, 52–66.

to be "someone else's good" just as Thrasymachus meant it. Rather than securing a truly common good rooted in the practice of virtue for its own sake, ruling in accordance with justice is a labor that requires compensation, and this demand may be so strong that it leads to the greatest injustices.

Now, to take a step back, Aristotle opens the second half of book 5 by asking: "Since it is possible that he who does injustice is not yet an unjust person, what sort of wrongs does someone who is in fact unjust commit, in the case of each sort of injustice?" (1134a17–18). This opening question, however, is answered in detail only after Aristotle discusses political justice and natural right. In these chapters, Aristotle's focus is no longer on general formulas that distinguish different kinds of justice or the general conditions of just and unjust actions. Aristotle now focuses on the particular choices individuals make that reflect their just or unjust character. He leads us to think about *this* person who steals *this* thing for *this* reason, not "theft" (consider 1135a5–13). The path through political justice and natural right is a strange one, but Aristotle seems to be working his way toward this distinction throughout (1134a17–24, 32–33, 1135a5–15, 15–17).

What should we make of these developments? I argued in the previous section that justice as lawfulness initially promises a truly common good—the mutual flourishing of the just person and the city—but also that the account acknowledges clear limits to this vision, as well as the wavering opinions of virtuous people themselves about the goodness of justice. Here, I have suggested that the tit-for-tat character of distributive, corrective, and reciprocal exchange draws virtuous people to a more explicit consideration of their own good: the exchange of goods holds the political community together. In light of the needs that motivate these exchanges—and here we should note that virtue too requires external goods (1099a31–b2)—it sometimes seems to virtuous people themselves that they gain nothing by being just or that political activity is laborious service rather than the peak of virtuous life. This situation compels us to raise the question of the goodness of justice precisely because our own virtue is so important to us. Aristotle's tacit references to Thrasymachus show that the question is on his mind at the same time that they illustrate the cautiousness of his approach to it.

It is in this context that Aristotle begins to consider the specific choices made by just and unjust people that form our character, and in so doing he calls attention to the end of just and unjust actions—to a person's knowledge or ignorance of the end at which they are aiming (1135a23–25, note the very rare use of the first person singular; see also 1135b11–13). In the next section the question of the end sought by the virtuous person, and in particular the equitable or decent person, becomes of paramount importance. Most commentators ask what end the equitable person looks to in order to explain how equitable judgments are made, but Aristotle is less concerned with that question than with how the end(s) the equitable person looks to affect the moral seriousness of equity in relation to justice, and therefore how equity or decency is related to justice as lawfulness.

Justice as Lawfulness and Equity as a Virtue

In the final section of book 5 (5.9–11), Aristotle introduces questions about doing and suffering just and unjust acts that his account might have provoked. These questions seem to arise from an attempt to think of justice as a mean between two vices in the manner of the other virtues. Justice alone has only one corresponding vice: injustice as *pleonexia*, on account of which one takes more of the good things and less of the bad than is merited (1133b29–1134a12). But what should we say of someone who takes *less* of the good things and *more* of the bad? Such actions are hardly blameworthy and are instead praised as decent or equitable.[27] Aristotle begins by presenting a series of impasses that largely concern whether it is possible to voluntarily suffer injustice (5.9); then he discusses equity as the virtue that corrects a deficiency in law (5.10); then he takes up once more a particular case of suffering injustice voluntarily: whether one can do injustice to oneself (5.11). The first set of impasses culminates in the question, Does an equitable person voluntarily do himself injustice by distributing more of his own good things to others (and taking for himself less than the just amount)? Then, after the chapter on equity, the second set of impasses begins by saying that it is clear from the preceding remarks whether one can do injustice to oneself (1136b15–21, 1138a4–5). Aristotle nevertheless goes on to give five more reasons why it is impossible to do injustice to oneself, only to reemphasize in conclusion that the impasse is generally resolved by something he said in the initial treatment (1138a27–29). The question of equity is therefore central to this part of the inquiry, and while Aristotle points in this way to the crucial consideration, he is hardly forthcoming about what is at stake. In the remainder, I will argue that the question whether the equitable or decent person does himself injustice is a continuation of Aristotle's consideration of the goodness of justice more generally.

Aristotle's teaching on equity and the impasse created by it can be roughly summarized as follows. Justice as lawfulness commands us to act in accordance with the laws, but equity is generally praised as something better. But regardless of whether we take justice in the broad or in the narrow sense, a departure from it would not seem to be a morally serious thing. So if acting in accordance with the law is serious, equity cannot be, and vice versa. And if they are both serious, justice and equity would seem to be the

[27]Curzer's admirably charitable effort to understand justice in accordance with Aristotle's "architectonic of the mean" requires him, admittedly, to coin a vice that Aristotle nowhere mentions (*meionexia*—desiring less than one deserves), and to introduce an account of *nemesis* that Aristotle briefly mentions in book 2 and never develops (Curzer, "Virtue of Justice," 220–21, 236–38). But given that Aristotle himself has no qualms about introducing hitherto nameless virtues and vices, it is hard to see why he would not have taken up this elegant solution if he intended to adequately defend justice as a mean between two vices.

same thing. Aristotle's solution is that the equitable is just, but not what is just according to the law. Equity is a correction of the legally just, and therefore better than the legally just, but not better than what is just "simply" or "without qualification" (1137a33–34, 1137b2–5 with 1137b11–13, 24–27). As a correction, equity must take its bearings by some principle or end already known, and this appears to be the intention of the legislator (1137b19–24), if not what is just without qualification.[28] As we will see, it is difficult to determine exactly at what end the equitable person is aiming because he is often aiming at more than one end.

Equity seeks to remedy the difficulty that laws (either written laws or fixed customs) are voiced as universally stated commands or prohibitions. But in some cases it is not possible to speak generally as well as correctly, and acting in accordance with the general statement would cause an error, harm, or injustice. Aristotle insists that the error resides not in the law or in the lawgiver, but in the nature of the case, "for such is simply the stuff of which actions are made" (1137b19). As Aristotle explained more than once at the beginning of the study, "matters that are involved in action and are advantageous have nothing rigidly fixed about them, any more than do matters of health," so "it is always necessary for those who are acting to look at the circumstances surrounding the occasion themselves" (1103b35–1104a11; see also 1094b19–27). The circumstantial character of human action is therefore the cause "also of the fact that all things are not in accord with law," and Aristotle draws the general conclusion that "the rule of something indeterminate is indeterminate too" (1137b27–29). Equity thus emerges as a virtue that makes the adjustments necessary to secure the good when simple obedience to the law cannot. In this way it preserves the spirit of justice as lawfulness, which itself was never identified with mere law-abidingness. Equity as a response to the indeterminate character of human action naturally prepares the examination of prudence in book 6, and there the "sympathetic judgment" characteristic of equitable people is ultimately absorbed into prudence (1143a19–32).[29]

These elements of a sound political teaching, however, do not account for the unusually great demands Aristotle places on the reader in the surrounding chapters, and there are two frequently neglected aspects of this chapter that are puzzling. First, the opening impasse begins by observing that the word *epieikês*—"equitable" or "decent"—is sometimes applied to things or people thought to be better than merely good (1137a34–b2). Like justice, then, equity has a broad sense and it is this sense which dominates

[28]For an interpretation of what is just without qualification, see Richard Bodeüs, "The Natural Foundations of Right and Aristotelian Philosophy," in *Action and Contemplation*, ed. Bartlett and Collins, 69–103, particularly 72–75.

[29]See also Collins, *Rediscovery of Citizenship*, 89–90; and Burger, *Aristotle's Dialogue with Socrates*, 104.

Aristotle's own usage throughout the *Nicomachean Ethics*. To mention the critical example, immediately preceding book 5 Aristotle argues that "shame does not belong to a decent person [*epieikous*]" because "shame attaches to voluntary acts, but the decent person will *never* voluntarily do base things," regardless of whether such things are base in truth or only according to opinion (1128b21–22, 29–31, my emphasis).[30] But if the impasse is simply that legal justice sometimes requires equitable corrections of the letter of the law, what does this broader sense have to do with it? What is the connection between these two very different things? Second, at the end of the chapter, Aristotle claims that "it is manifest also who the equitable person is: he who is disposed to choose and to do those sorts of things and is not exacting to a fault about justice, but is instead disposed to take less for himself even though he has the law on his side, is equitable" (1137b34–1138a2). This remark presents the equitable person as willing to subordinate his immediate advantage to some greater good, in contrast to the just person in the particular sense who is disposed to demand and choose exactly what he deserves. But this would seem to reopen the impasse rather than to solve it. If one is led by the circumstances to take less than one might, why (or how) should such equitable actions be regarded as more serious or better than just ones? In these passages, Aristotle does not fail to distinguish two senses of equity but rather points to how a certain type of equitable actions illuminate the character of just and virtuous people as such.[31] These features of the chapter on equity indicate that what is at stake in the contrast between an equitable person willing to take less of the good things for himself and a just demand to receive exactly what one is due is the relation between the common advantage of the city and one's own good as a virtuous person.

Let us consider the relation between the good of the virtuous person and the good of the political community more carefully. In a case in which the equitable person "takes less" of the good things, the action may be understood in four ways. First, the equitable person may simply choose to pursue the advantage of the city rather than his own. After all, the good of the city is nobler and more divine than the good of an individual (1094b7–10). But

[30]In almost every use of the term outside 5.10, *epieikês* has this much broader meaning of "a refined person" or "an impeccably virtuous person" in contrast to a base one. See especially 1128b21–31, as well as 1102b10, 1128a18, 1159a22, 1167b1, 1172b11 and 1175b24. I would not insist that every use of *epieikeia* suggests more than what we still think of as decency—a well-raised and respectably good character. But some of them, among them the examples quoted in the body of the text above, do suggest a much higher standard: someone refined beyond reproach, one who perfectly conforms to what is or is held to be virtuous (consider, however, the very next use at 1132a2).

[31]Contra A. H. Chroust, "Aristotle's Conception of Equity (*Epieikeia*)," *Notre Dame Law Review* 18, no. 2 (1942): 119–28, particularly 127; and Shiner, "Aristotle's Theory of Equity," 1247n9.

the character and extent of the loss would nevertheless be an important consideration for weighing the goodness of the equitable choice. If he chooses to forgo altogether some good or goods in a significant way, the sacrifice might be praised as noble or serious, but would he not also truly be harming himself? If, on the other hand, the loss is insignificant and the equitable person, in preferring the common advantage to his own, does not give up any goods that are necessary or important to his activity as a virtuous person, then he suffers no genuine loss. But if justice as lawfulness, of which equity is a part, is praised so highly precisely because it is difficult (1130a7–8, 1105a8–10), then it would seem that equity is not so serious a virtue as common opinion holds it to be—what is difficult about giving up one's claim to unnecessary and unimportant things? Third, the crucial consideration may be that the things given up are not important to the equitable person because he regards the practice of virtue itself as choiceworthy for its own sake. Here, then, there might be a truly common good: the goods given up contribute to the common advantage, and the equitable person flourishes in the practice of virtue for its own sake. But this suggestion would have to account for the absence of this claim anywhere in book 5: neither equity nor any other form of justice is ever said to be noble or choiceworthy for its own sake.[32] Because justice as lawfulness is the culmination of Aristotle's account of the virtues of character, because justice as a particular virtue is a mean unlike any other, and because an exchange of goods has been shown to be the nature of justice as a virtue, we have ample grounds to wonder whether this silence is significant. Fourth and finally, since Aristotle has emphasized that justice as a particular virtue concerns the exchange of goods for goods and evils for evils, and equity is itself a kind of the just (1137b8–11), the equitable person may somehow take himself to be involved in an exchange. He does not, then, simply sacrifice his share of the good things or choose what is equitable for its own sake. Instead, he receives or expects to receive something good in return. Here we might recall that acting in accordance with justice sometimes seems contrary to our immediate advantage while also promising happiness. I suggest that the problem with equity is not so much that the end at which the equitable person aims is unclear, but rather that equitable people (and virtuous people more generally) often hold more than one of these views simultaneously, and are perhaps never quite clear about their incompatibility.

As was already mentioned, Aristotle begins the first set of impasses by asking whether it is possible to voluntarily suffer injustice, and this culminates in the question tied to equity: can someone voluntarily do injustice to himself? Aristotle presents a case in which someone might be thought to do himself injustice by giving away his share of goods or "more of his own things" than is merited (1136b20–21). Referring to common opinion,

[32]Bolotin, "Question of Evil," 168.

Aristotle reports that this is "the very thing that those of a measured disposition are held to do, since the equitable person is disposed to taking less for himself" (1136b15–21). The passage at the end of the chapter on equity therefore directly echoes this one. Now Aristotle denies that it is possible to do injustice to oneself. Though he could say that, since virtue is the most important thing, or since the good of the virtuous person as virtuous is included in the common good secured by equitable actions, giving up one's share of the good things is no real loss. But Aristotle says nothing of this sort, and the explanation he offers instead is troubling: "For as may happen, [the equitable person] is grasping [*pleonektei*] for more than his share of another good—for example, of reputation or of what is unqualifiedly noble [*tou haplōs kalou*]" (1136b21–22). The only place that Aristotle mentions the noble as an end of just action thus presents it as an object of a virtuous person's unjust grasping.[33]

What are we to make of this paradoxical grasping of the equitable person? And, more generally, why is Aristotle so determined to demonstrate the impossibility of suffering injustice voluntarily (1136a30–31, b11–14; see also 1138a18–24)? These questions are connected in a way that bears on the fundamental issue of the goodness of justice. I have argued that virtuous people seem to be of two minds about its goodness, sometimes thinking justice is a truly common good and other times suspecting that the unjust get the better of the just, and this latter doubt received some unexpected support in the passage in which justice appeared to be a kind of thankless labor on behalf of others (1134b1–8). In that light, must not the equitable disposition to take less of the good things for oneself appear foolish or harmful? We might be tempted to think, then, that by subordinating our own good to the common advantage we, precisely as virtuous people, are doing ourselves an injustice or harming ourselves. Yet, as I also argued above, the nature of justice as a virtue is to give and receive an equal share and all of our political relations are founded on the expectation that good is requited for good, and evil for evil (1132b31–1133a2). Perhaps the belief underlying the decent person's willingness to take less for the sake of the common advantage is, then, that by voluntarily suffering some such harm one becomes deserving of a good return, and in the highest case, perhaps even of that otherwise elusive, complete good: happiness.[34] Perhaps the "injustice" we voluntarily

[33]Only Burger (*Aristotle's Dialogue with Socrates*, 103) has registered surprise that the equitable person is somehow unjustly grasping, but she offers no interpretation of the remark. Kraut (*Aristotle: Political Philosophy*, 166–67), who does not mention the use of *pleonektei*, uses precisely this passage to explain how equity is a form of *just* exchange.

[34]This suggestion is consistent with ambiguities in book 1 concerning the precise relationship between happiness and virtuous activity. Bruell, "Happiness," and Bartlett, "Problem of Happiness," articulate Aristotle's demanding standards of happiness as well as the ambiguities in his account as to whether morally virtuous activity by itself fulfills them. See also T. D. Roche, "Happiness and the External Goods," in *The Cambridge Companion to Aristotle's "Nicomachean Ethics,"* ed. Ronald Polansky

do ourselves by taking less of the good things while laboring for the good of others promises happiness because it makes us feel worthy of it (contrast 1132b25–27, 1133a3–5, and 1134b4–7 with 1163b25–27). Such sacrifice of the good things—our "suffering" injustice in pursuit of just ends—thus becomes the basis of what we take to be a just claim to reward, and hope for this reward produces the peculiar pleasure that sustains us through the burdensome demands of law and even the most difficult noble actions (consider 1117b7–16 with 1116a3–4).[35]

Aristotle's circumspect reflection on whether someone can voluntarily suffer or do himself injustice shows, however, that these beliefs cannot be coherently maintained. According to this argument, no one does injustice to himself because "no one wishes for what he supposes not to be of serious worth" (1136b7–8; see also 1134b11–12). Therefore voluntarily doing oneself an injustice or any other sort of harm is only intelligible if one expects something good or serious to be the result of it. But precisely if we are aiming at something good and serious—whether it be the common good, the good of others, or our own happiness—the harm we undergo must be understood as an incidental price we pay: "whoever gives more of his own goods than is merited suffers nothing contrary to his own wish. The result is that he does not suffer injustice on this account, at least, but if he suffers anything at all, it is harm only" (1136a23–31, 1136b14). No one voluntarily harms himself, but some are indeed harmed in pursuit of serious ends. Further, if our sense of desert depends on holding at the same time that justice is good and indeed a truly common good, and that justice is bad and that we voluntarily suffer an unjust loss by serving someone else's good, we can understand what is at stake when Aristotle insists on the impossibility of both doing and suffering justice or injustice simultaneously, as well as the suggestion that in acting equitably we may also be grasping for more than our share. A truly common good is in need of no reward, and there is no balance to be paid or reward to be claimed for incidentally harming oneself, even in pursuit of serious ends. By calling attention to the equitable or decent person as a representative of the virtuous as a class (1137a34–b2), Aristotle indicates that the difficulty belongs to moral virtue as such. Perhaps the tension between these different elements of justice—the spirit of justice as a truly common good and an equal exchange of goods on the one hand, and the spirit of equity as a voluntary sacrifice on the other—is the source of

(Cambridge: Cambridge University Press, 2014), 34–63, which makes some similar points from a different angle.

[35]Consider as well the relation of pleasure and nobility at 1104b9–11 and 1104b35–1105a1 with the remark about difficult things at 1105a9–10.

the grandeur of law that transcends its necessarily imperfect content.[36] But once we reflect on that tension as Aristotle leads us to do, justice as the whole of virtue necessarily appears less complete than it did at the outset of book 5. The political life of moral virtue, precisely at its peak, points beyond itself.

The Contest between the Political and Contemplative Lives

Nothing in the foregoing interpretation should lead us to think that a common good does not exist or that Thrasymachus is right to dismiss justice as someone else's good. There are undoubtedly great goods that can be shared with or pursued alongside others (friends). Aristotle's examination of justice does, however, require us to question more carefully whether the actions commanded or good things apportioned by law are in the most critical circumstances truly good for oneself (and possibly also good for others) or are instead truly another's good (and not good for oneself). The absence of the claim that justice is choiceworthy for its own sake in the final and longest discussion of a moral virtue highlights the starkness of these alternatives.

It is no surprise then that knowledge becomes of paramount importance to virtuous action: "People suppose that to know the just and unjust things is in no way to be wise, because it is not difficult to comprehend what the laws say, but these are not the just things, except incidentally" (1137a9–12, 1144a13–22; compare 1105a28–b4). Doing "what is just in the primary sense"—what is both good for ourselves and for the political community—is far from easy (1136b34–35 with 1137a12–17). Aristotle offers, as if in conclusion:

> The just things exist among those who share in the unqualifiedly good things and who have an excess or a deficiency in them. For some, there is no excess of these goods, for example, the gods, perhaps; for others—for the incurably bad—there is no beneficial portion of them but all of them do harm; and for still others, there is a beneficial portion up to a certain amount. On account of this, [justice] is something human. (1137a26–30)

If perfect gods have any need of the unqualifiedly good things, they would always use them in an advantageous way. But as mortal beings, we are compelled to be concerned with them and to recognize that the goods involved in just exchanges are contested. Equity is necessary because, if justice is to secure a truly common good, the apportionment of goods cannot simply take its

[36]Alfarabi reflects something of this tension in an oracular remark on Plato's *Laws*: "In itself the law is venerable and excellent; it is more excellent than anything said about it and in it" (Alfarabi, *Summary of Plato's Laws*, in *Alfarabi: The Political Writings, Vol. II*, trans. Charles E. Butterworth [Chicago: University of Chicago Press, 2015], 1.17).

bearings by the practice of virtue. And, despite the dependence of flourishing virtue upon such goods (1099a31–b8), virtuous people themselves cannot concern themselves with them only to the extent that it promotes their own virtue. From the beginning of book 5, however, Aristotle has counseled us to choose what is truly good for us. The problem with the unjust, grasping person has never been his motive—his concern to benefit himself—but rather the objects he pursues (1129b1–6; see also 1159a12, 1166a14–24). The grasping person has not given enough thought to what is truly good for himself, but this question does not fully grip us until we examine the connection between justice and happiness in the manner Aristotle has indicated.

I began by suggesting that attention to justice could help resolve the debate about Aristotle's understanding of the relationship between the political and contemplative lives—the preeminent candidates in the dispute concerning the most choiceworthy life (*Politics* 1323a19–21, 1324a25–32). How, and to what extent, does the critique of justice we have discerned support the conclusion announced in book 10?

Apart from the barrage of dazzling arguments offered on behalf of the contemplative life, it is crucial to observe that Aristotle's argument is also based on a critique of moral and political life.[37] Aristotle argues that the contemplative life will be more self-sufficient than the political life both because it is less in need of others with a view to whom the moral virtues are practiced, and less in need of the goods of fortune that are necessary for the practice of the moral virtues (1177a30–34, 1178a25–34). Further, he bluntly acknowledges that morally virtuous activity is not in fact choiceworthy for its own sake, but rather seeks to gain something beyond itself (1177b1–4, 6–18). Remarkably, Aristotle presents happiness itself as the end sought apart from virtue: the politician seeks to gain "the happiness of the politician himself and of his fellow citizens, which is something other than political activity and which we clearly seek out on the grounds that this happiness is something other than that activity" (1177b12–15; compare what "is held" to be the case at 1176b6–9). This comment confirms that while justice initially appears to be a truly common good, the practice of complete virtue is more deeply motivated by the promise of happiness distinct from virtuous activity itself, as a happiness that renders us "in need of nothing" must be (1097b15, 1176b5–6, 1177b24–26). The problem of justice, then, is not merely that political necessity or the basic needs of human life compel us to act in ways that fall short of perfect justice; the difficulty is rather that the elements that together support our belief that justice promises happiness are in tension with each other. But if the problem of justice is therefore a permanent one—while justice is in one sense the whole of virtue and decency limns the character of the morally virtuous as a class—is not awareness of it a powerful argument on behalf of the other candidate, the philosophic life? Aristotle's argument for

[37]Bruell, "Theory and Practice," 19–20.

the superiority or necessity of the philosophic life would thus rest on a critique of what appears to be the most serious alternative.

But is not such a case rather limited? For Aristotle's explicit protreptic remains memorably perplexing. Aristotle claims that "complete happiness" consists in the divine activity of the intellect, and the contemplative person, whose activity is most akin to that of the god, is dearest to the gods (1177a12–18, 1178b22–28, 1179a22–32). Although Aristotle extravagantly praises this divine activity over and against the merely "human" activity of moral and political virtue that is happy only "in a secondary way" (1178a10–22), he also constantly qualifies it. A contemplative life of this sort "would exceed what is human," and he repeatedly calls attention to our neediness as composite (mortal) beings (1177b16–26, 26–27, 1178b33–1179a2). Indeed, "a wise person," no less than "a just person and all the others," is in need of the necessities of life (1177a28–29). Such then is the "intellectualist" case he makes, but it remains difficult to discern exactly what Aristotle thinks about the availability of complete and self-sufficient happiness even in the contemplative life, to say nothing of exactly what that life is or presupposes.[38] In between two particularly jarring remarks about the gods and their concern for human things (compare 1178b7–18 with 1179a22–28), Aristotle therefore exhorts us to examine what has been said by comparing it to deeds and to life, regarding what is discordant as "mere speeches" (1179a17–22). If the critique of justice is allowed to influence our reading of the case for the contemplative life, however, we would be led to conclude that the more sober remarks are the truer ones.

Finally, if morally decent action may be a way of grasping for still greater or nobler goods, it may yet be possible to practice a sort of decency, rooted in the insight that politics points beyond itself, that takes less in a clear-sighted way. The person who sees that justice can be neither identified with happiness nor reasonably expected to guarantee it is nevertheless a human being who lives together with a number of others. And the contemplative person will, Aristotle says, choose to act in accordance with the moral virtues. But because "he will need such things, then, with a view to living as a human being," rather than for the happiness they promise, the spirit in which he practices virtue is no longer the same (1178b3–7; 1178a3–5).[39] Aristotle's delicacy in presenting this difference between the philosophic life and the life of moral virtue—the care he takes in order to present moral and political life at its peak, perhaps at times even granting it more than its due—is a measure of his own decency.

[38]Bruell argues that Aristotle's account of the presuppositions and requirements of the philosophic life is to be found in the *Metaphysics* (Christopher Bruell, *Aristotle as Teacher: His Introduction to a Philosophic Science* [South Bend, IN: St. Augustine's, 2014]).

[39]Bruell, "Happiness," 156–57.