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Marc D. Guerra

*Assumption College, mguerra@assumption.edu*

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PRUDENCE AND THE LEGISLATIVE ART IN BOOK II OF ARISTOTLE’S POLITICS

Marc D. Guerra

The failure of contemporary Christian thought sufficiently to acknowledge the crucial role that prudence plays in political life is a recurring theme in Ernest Fortin’s writings. Fortin delights in pointing out that even many of the legal theorists who call for a return to the moral wisdom of Aristotle or Saint Thomas typically do not share their predecessors’ willingness to grant prudence a free scope of operation in the political world. Fortin recognizes, for example, that in the eyes of analytic Thomists such as John Finnis and Germain Grisez the Aristotelian-Thomistic reliance on prudential judgments “leaves too much to chance.” Dissatisfied with having to wrestle “with excruciatingly difficult prudential decisions,” these soi-disant Thomists characteristically seek to “replace [such decisions] with a scheme the successful implementation of which is supposedly less dependent on the personal judgment of the individual moral agent.” But because he remains unconvinced about either the viability or desirability of such schemes, Fortin believes that we finally would be better served by trying to recover the classical understanding of prudence. And in his view, the locus classicus of such an understanding is Aristotle’s Politics. For Fortin, Aristotle’s Politics remains invaluable not simply because it sheds indispensable light on the starting point of all serious political reflection, but, also, because it provides nothing less than a complete introduction “to political philosophy tous court.”

In an effort to help recover this original understanding of prudence, the following essay examines the relation of prudence and the legislative art as it is presented in book II of the Politics. As we shall see, Aristotle’s argument in this book not only reveals something about the origins and ends of the legislative art, but, in discussing the role of prudence in lawmaking, performs the salutary task of reminding the contemporary reader why law must always, but indispensably, articulate an imperfect combination of thought and action.
Book II of Aristotle’s *Politics* stands apart from any other book in the work. Whereas the previous book investigates the prepolitical origins of political life and the following books address the dual question of the regime and the best regime, the second book appears simply to present Aristotle’s appraisal of other men’s arguments on the nature of the best regime. Accordingly, chapters two through eight of book II examine regimes that are “spoken about by certain persons that are held to be in a fine condition” and chapters nine through eleven consider existing regimes “that are said to be well managed.” The second book of the *Politics* thus centers around the theme of thought and action and the proper relation of the one to the other.

Aristotle states at the beginning of book II that it is his “intention to study the sort of political partnership that is superior to all for those living as far as possible in the manner one would pray for” (1260b27-29). The remark, at first glance, seems merely to repeat Aristotle’s announcement at the conclusion of book I that he will investigate next the views others have put forth about the best regime (1260b25). Closer inspection, however, reveals that the opening remarks of book II alter, or perhaps refine, Aristotle’s earlier promise. Aristotle presently claims that he intends to consider the political partnership that is “as far as possible” the best political arrangement. Instead of offering a speech on the kind of regime that men can hardly imagine much less put into practice, Aristotle will theorize about something that men can actually envision as realizable and hence legitimately request as the object of their prayers.

Aristotle continues his discussion of “men who have put forward some view concerning the regime” (1273b27) in the final chapter of book II. But whereas in the first eight chapters of book II he spoke of men who “led entirely private lives,” in the concluding chapter of the book he speaks of men who were “craftsmen of laws only [or] of a regime as well” (1273b32-33). The twelfth chapter of book II thus examines the works of men who combined thought and action in law in the practice of the legislative art. At his best, it will be the wise legislator who, as far as possible, makes the proper combination of speech and deed explicit in his laws. The argument of the final chapter of book II accordingly points back to the chapters that have preceded it and, by so doing, provides a fitting conclusion to the book as a whole.

Before examining Aristotle’s list of legislators in chapter twelve, it is necessary to review the first eleven chapters of book II. The following account is by no means intended to provide an exhaustive treatment of chapters two through eleven of book II of the *Politics*. Rather, it is designed to recount, in outline form, some of the examples Aristotle offers in book II of earlier, flawed attempts to combine thought and action in political life prior to his turning to a discussion of legislators in the final chapter of the book.

The first six chapters of book II contain Aristotle’s analysis of Socratic political proposals as they are presented in Plato’s writings. Chapters two through five examine the political propositions Plato’s Socrates sets forth in the *Republic*.
and chapter six treats the political propositions outlined in the *Laws*. Aristotle’s criticisms of Socrates in the second book of the *Politics* primarily focus on the excessive amount of artificial unity the city in the *Republic* would impose on human life. The radical form of communism that marks life within the *Republic*’s city in speech ignores the natural differences that exist among men and, in so doing, tyrannically limits the possibilities that nature provides for the development of human flourishing. For example, Aristotle states that the proposed arrangements of the city in speech “make the city too much of a unity” and thus “eliminate the task of two of the virtues, moderation . . . and liberality” (1263b9-11). According to Aristotle, in the *Republic* Socrates advocates a kind of rule that renders impossible the cultivation and practice of virtue as well as participation in political life, understood as the exchange of rule among free and equal citizens. 8

Aristotle treats the proposals of the *Laws* more favorably than those of the *Republic*. Nevertheless, Aristotle observes that by the end of the dialogue the regime in the *Laws* gradually turns around again to the regime in the *Republic* (1265a1-4). In contrast to the communistic regime of the *Republic*, the regime in the *Laws* allows for the existence of individual households and private property. To preserve the material conditions needed to sustain both private households and an appropriate distribution of private property, the legislator in the *Laws*, identified by Aristotle as Socrates, has fixed the city’s number of estates. On the other hand, he thoughtlessly leaves procreation unrestricted and thus does nothing to control the number of the citizens (1265a38). The insufficient attention the legislator pays to the problems sure to arise by fixing the number of estates and leaving procreation unrestricted inevitably will “cause poverty among the citizens, and poverty produces factional conflict and crime” (1265b11). The regime in the *Laws* therefore differs only outwardly from the regime in the *Republic* in regard to households and property: each regime, in effect, does not allow for the genuine existence of either household life or private property.

Chapters seven and eight of book II discuss proposals that “are closer . . . to established regimes under which [men] are now governed” (1266a33) than are the political orders limned by Socrates in either the *Republic* or the *Laws*. The seventh chapter of book II considers the regime advanced by Phaleas. Phaleas thought that stability could best be brought to the internal life of a city by providing every man within the city with an equal amount of permanent property. Notwithstanding the practical problems that would be associated with such a practice, Aristotle argues that Phaleas’s greatest error was his failure to appreciate that men quarrel most over the unequal distribution of honors and not over the unequal distribution of property. In other words, it is the dangers that arise from the attractions of the soul and not the needs of the body that most jeopardize the internal stability of a city. As Aristotle remarks, men do not “commit injustice only because of the necessary things . . . for they might desire merely the enjoyment that comes with pleasures unaccompanied with pain” (1267a3-8). Aristotle thus criticizes Phaleas’s materialistic and egalitarian position for naively assuming that the political problem can be
solved simply by bringing about an equal distribution of material goods among men. Aristotle accordingly suggests that political life must acknowledge and, as far as possible, satisfy man’s psychic needs, in this case, those for public recognition and office or rule.

Chapter eight examines the propositions of Hippodamus, a man particularly prone to abstraction and fond of dividing things into threes, who, Aristotle reports, “wished to be learned with regard to nature as a whole” (1267b29). Aristotle relates that Hippodamus set forth a series of political proposals in connection with his account of the best regime. Aristotle devotes the most attention to Hippodamus’s proposal to confer a special type of honor on men who discover things that a city may find useful. The question of awarding innovations of all kinds raises the further question of whether it is harmful or advantageous for cities to change their laws, especially laws that preserve the ancestral. Aristotle observes that men obey a city’s laws not only because the laws are good, but because the laws are their laws and hence something they have internalized through habituation. He subsequently notes that the frequent alteration of legislation causes men to gain a certain distance from the laws and thus implies that as a general rule the practice of changing laws should be avoided. As we shall see though, Aristotle is neither an advocate of a simple form of political conservatism nor a political philosopher who reserves the ability to change traditional laws to his own kind. On the contrary, in the Politics Aristotle points out how prudent legislators can build upon, and hence must necessarily alter, earlier legislation in their attempt to bring about a better arrangement of thought and deed in their regimes.

While the previous seven chapters had investigated regimes in speech, chapters nine, ten, and eleven examine the regimes of Sparta, Crete, and Carthage respectively. Each of these regimes is shown to be defective in some major way, thereby confirming Aristotle’s earlier statement that the “regimes now available are in fact not in a fine condition” (1260b35). Aristotle’s deepest criticism of the Spartan regime concerns its excessive praise of courage or manliness as the goal or purpose of the political community. As a result of this practice, Sparta has come to mistake a necessary, but subordinate, part of virtue for the whole of virtue. The legislator in Sparta, Aristotle concludes, has formed citizens that excel during wartime, but who come “to ruin when . . . ruling through not knowing how to be at leisure” (1271b23).

In contrast to Sparta, the Cretan regime enjoys a greater degree of political stability, e.g., unlike their Spartan counterparts, the Cretan slaves are not rebellious. Aristotle initially suggests that the lack of political unrest in Crete can be attributed to the legislation of the city’s founder, Minos, who had “philosophized” when arranging his laws (1272a21). Through his additional remarks, however, Aristotle shows how the city’s geographical location and the insulation this provides from foreign disturbances has played no small part in the preservation of political tranquillity in Crete. Chance more than the work of a semimythological philosophic legislator is to be attributed with having kept the city of Crete free from turmoil.
Aristotle observes that the Carthaginian regime is to be praised for basing a man’s election to office on his claim to excellence as well as to wealth. For, as Aristotle elsewhere teaches, without such a combination of virtue and equipment “it is impossible or at least not easy to perform noble actions.”\textsuperscript{11} The regime in Carthage therefore possesses a truly aristocratic element. Yet, in the operation of their regime, the Carthaginians make an error that resembles the one made by the people of Sparta. As the Spartans mistake a part for the whole of virtue, the Carthaginians are inclined to take the material preconditions of noble actions for a sign of the existence of virtue itself.\textsuperscript{12} Wealth rather than excellence has become the true end of political life in Carthage, thus transforming the earlier Carthaginian aristocracy into an oligarchy.

Aristotle’s criticism of previous versions of the best regime is drawn to a close with the critique of the quasi-aristocratic Carthaginian regime. The most notable regimes in speech and the most notable regimes in deed fall short of being finely administered according to the analysis of book II of the \textit{Politics}. Nevertheless, by exposing the defects of earlier political proposals, Aristotle has brought to light the dangers of a political theorizing that abstracts from deeds (for example, Hippodamus) as well as a political life uninformed by genuine political reflection (for example, Sparta and Crete).

Let us now turn to an analysis of the final chapter of book II of the \textit{Politics}. The first men Aristotle mentions among his list of legislators are Lycurgus and Solon, each having been an architect of laws as well as of a regime. Of the eleven legislators Aristotle refers to in chapter twelve, only Lycurgus and Solon are explicitly said to have been founders of a regime.\textsuperscript{13} Men such as Lycurgus and Solon set themselves apart from other legislators by possessing both the legislative and the founding arts. It is thus appropriate that Aristotle begins his discussion of lawgivers with a reflection on the kind of lawgivers who begin regimes.

Aristotle says relatively little here about Lycurgus, the founder of Sparta, as either a craftsman of laws or a craftsman of a regime. Aristotle limits himself to mentioning that some men, who are left unnamed, claim that Lycurgus was a student of Thales, a philosopher who once made a public demonstration of the practicality of philosophy (1259a6-18).\textsuperscript{14} But, according to Aristotle, this account of Lycurgus’s education runs contrary to available information about the chronological history of these men.

The significance of Aristotle’s correction becomes clearer when we recall that he had spoken of Lycurgus’s deeds as a legislator during his consideration of the Spartan regime in the ninth chapter of book II. Aristotle there suggested that the institution that at present “holds the [Spartan] regime together,” namely, the democratic Ephorate, owes its existence less to the prescience of Lycurgus’s legislative prudence than it does to the accidents of chance (1270b17-20). Due to the increased influence the institution of the Ephorate has come to have on the Spartan regime, the Spartan people have grown satisfied that they currently take part in the city’s greatest office.\textsuperscript{15} As a result of the emergence of the democratic
Ephorate, the Spartan regime has ceased to be an aristocracy and gradually has become a democracy (1270b16). That Aristotle does not take the particular course by which the Spartan regime has moved from an aristocracy to a democracy simply to be good is evidenced by his likening the influence of the Ephorate in Sparta to the influence of a tyranny (1270b14).

Aristotle further implies that Lycurgus’s legislative skills were defective on account of his failure to lead the Spartan women to the city’s laws, an endeavor that Aristotle states Lycurgus eventually “gave... up” (1270a8). The distance the Spartan women maintained from the city’s laws allowed them to become licentious and attached to luxury. Inasmuch as in Sparta the men are “dominated by the women” (1269b24), Lycurgus’s failure to bring about the lawfulness of the Spartan women exposed the regime to being infected with an excessive desire for wealth as well as a propensity for laxness. Aristotle’s account of the defects of the Spartan regime earlier in book II therefore cast doubts, other than those based on mere chronology, on the likelihood of Lycurgus having sat and studied at the feet of a philosopher who knew how to make practical use of philosophic wisdom.

Given the lack of any extended discussion of Lycurgus in the concluding chapter of book II, Aristotle’s detailed analysis of the craftsmen of laws and regimes in some sense begins with his consideration of Solon. Aristotle’s treatment of Solon far exceeds his discussion of any other man included among the list of legislators. Indeed, more than a third of the final chapter of book II is devoted to a consideration of Solon. Aristotle’s first words about Solon relate that he is thought by “some” to have been “an excellent legislator” (1273b35). Solon is reputed to have put an end to the exclusivity of the earlier Athenian oligarchy and in so doing to have emancipated the Athenian people. Through these actions, Solon is said to have “established the traditional democracy” (1273b38), a mixture of the oligarchic council of the Areopagus, the aristocratic elective offices, and the democratic law courts. Speaking in his own name, however, Aristotle observes that Solon’s particular, but nevertheless substantial, contribution to the Athenian constitution consisted in his opening of the law courts to the people, since the office of the Areopagus and the elective offices existed before Solon’s rule. It is by initiating the practice of populating the law courts out of the citizenry as a whole that Solon became a craftsman of a regime, according to Aristotle.

On the other hand, Aristotle further notes that it is precisely the political innovation peculiar to Solon that fuels the claim that he is responsible for the destruction of the nondemocratic elements of the Athenian regime. This charge asserts that as the authority of the law courts grew, the democratic institution that Solon introduced into Athens became something of a tyrant and thus transformed the older Athenian regime into the present democracy (1274a6). In apparent support of the claim, Aristotle mentions that following Solon’s reforms both Ephialtes and Pericles curtailed the influence of the council of the Areopagus, and Aristotle additionally reports that Pericles established the practice of payment for serving on the law courts, a custom that promoted demagoguery and hastened the
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coming about of the current form of democracy in Athens (1274a9-11). This accusation against Solon recalls Aristotle’s previous criticism of Lycurgus and his failure to anticipate and tame Sparta’s democratic Ephorate. In each case, an unfortunate combination of a lack of legislative foresight and chance is said to have turned the people’s unbridled desire for power into a tyrannical force within the city.

Speaking in his own name again, Aristotle responds to this accusation by observing that the transformation of Solon’s own mixed regime into the current democratic arrangements of the Athenian regime cannot be attributed to either the letter or the spirit of Solon’s legislation. Both the adaptation of political innovations belonging to men other than Solon, e.g., Pericles and Ephialtes, and the accidents of chance have contributed to the formation of the present Athenian democracy. As evidence of this fact, Aristotle recounts that the Athenian people’s assistance in the city’s maritime victory over Persia brought them unforeseen and hence untutored and unrestrained political power. Each of these events, in its own way, incited political changes within Athens that Aristotle understands to be not in accord with Solon’s intention (1274a13).

Solon’s addition of a democratic element into the Athenian regime was rather restricted: it in fact “granted only the most necessary power to the people,” i.e., the ability to elect men to office and to call them to account if needed (1274a15-16). Aristotle further remarks that deprived of these limited forms of political participation and responsibility, the people of Athens would have considered themselves slaves to the regime and would have harbored enmity towards the city. Solon’s prudent proposal to engage the people of Athens in the city’s political life is then a prime example of the principle Aristotle articulates amid his discussion of the shortcomings of Lycurgus’s legislation, namely, that it is necessary for the legislator to ensure that “all the parts of the city . . . wish it to exist and continue on the same basis” (1270b20-21).

Aristotle’s presentation of Solon in the twelfth chapter of book II in many ways parallels his treatment of Solon in the Athenian Constitution. At the beginning of that work, Aristotle remarks that Solon “was the first to appear as head of the people” (AC, 2.3). As the full account of Solon which follows makes clear, however, Solon is not simply the man he “appears” to be. Aristotle presents Solon in the Athenian Constitution as the Athenian legislator/statesman par excellence; it is in this capacity, Aristotle suggests, that Solon is the champion of the people. Stated differently, Solon’s capacity to be a champion of the people rests on his ability to discern the element of truth in the democrat’s claim from a perspective higher and broader than that of any political partisan, and, insofar as this benefits the people, Solon can justly be considered their champion.

Early in his consideration of Solon, Aristotle recounts that after Solon had given his laws he was beset by men “criticizing some points about the laws and asking questions about others” (AC, 11.1). Solon thereupon left Athens and undertook a ten year journey to Egypt designed to fulfill the dual purpose of
“seeing that country” and encouraging the Athenian people to learn how “to carry out their provisions for themselves” (AC, 11.1). Solon’s Herodotean excursion forced the people of Athens to live with and govern themselves by their new laws and not to rely excessively on the judgments of one man, however wise or prudent, for ongoing political guidance. Solon’s self-imposed exile from Athens suggests that he is perfectly aware of the political reality that men like Hippodamus tend to overlook, i.e., that men’s obedience to law in large measure depends upon their being habituated to particular laws. Moreover, in creating a situation in which the Athenians were required to draw near to the city’s laws, Solon succeeded in doing for his people what Lycurgus had failed to do for half of his city’s population. Aristotle thus seems to use the example of Solon to illustrate that at times it is beneficial for a legislator to force a certain set of circumstances on his regime in order to attempt to minimize the potentially undesirable effects of chance.

One of the most striking features of Aristotle’s treatment of Solon in the Athenian Constitution is the degree to which Aristotle incorporates Solon’s poetry into his account. By citing Solon’s poetry, Aristotle allows his reader to appreciate that the legislator’s thought is marked by a kind of transpartisan reflection that perhaps borders on the philosophic. In his poems, Solon recollects how he struggled to bring an order of sobriety to the city of Athens that mirrored the order that existed in his own soul. This task was made all the more difficult because the Athenians for whom he legislated were “men of unbalanced souls” (AC, 12.4). In this regard, Solon characterized his life as a legislator as one who “stood at guard on every side, a wolf at bay among a pack of hounds” (AC, 12.4). As we shall see, Aristotle’s emphasis in the Athenian Constitution on Solon as a legislator who expresses his thoughts through poetry touches upon a theme present at the heart of the last chapter in book II of the Politics, namely, the need for legislators to speak to men’s passions as well as to appeal to their sense of what is reasonable.

After concluding his remarks about Solon, Aristotle takes up a discussion of two tales which offer glimpses into the personal histories of various legislators. In his comments on the two stories, Aristotle offers a brief, but nevertheless provocative, reflection on the origin and the transferability, both from man to man and from place to place, of the legislative art.

Aristotle reports as historical fact that Zaleucus and Charondas were both legislators, the former for the Epizephyrian Locrians and the latter for the Chalcidian cities in Italy and Sicily. Aristotle further remarks that some men, whom he leaves unnamed, claim that Charondas was a student of Zaleucus. Zaleucus then is purported to have been a legislator who taught others his distinctive skill. If the connection between the two men were true, it would imply that the legislative art is, at least in principle, transferable from legislators to potential legislators. The question of acquiring the legislative art, in other words, would be a matter of education as well as chance.

Aristotle, however, denies the alleged connection between Zaleucus and Charondas on the basis of the historical inaccuracies that mar the tale’s account. In
particular, he doubts the accuracy of what it relays about Zaleucus’s and Charondas’s education. Prior to being Charondas’s teacher, Zaleucus, alone with Lycurgus, is said to have been a student of Thales. But, Aristotle observes, Charondas, Zaleucus, Thales, and Lycurgus lived at different times; accordingly, those who speak of a connection between these men do so “without much of an investigation of chronology” (1274a30). The question of whether legislators are taught by other legislators thus does not find its solution in the tale about Zaleucus and Charondas.

In describing the alleged connection between the two aforementioned legislators, Aristotle mentions a Locrian named Onomacritus. At first blush, the reference to Onomacritus appears simply to be an unnecessary digression, e.g., Onomacritus is not said to have known either Zaleucus or Charondas. But upon closer inspection, the reference to Onomacritus is far more than a mere digression. Indeed, the question raised by the account of Onomacritus suggests that Aristotle may recount the tale about Zaleucus and Charondas in part as a means of introducing the Locrian into his discussion of legislators.

According to one tradition, Onomacritus is believed to have been the first man to become skilled in legislation (1274a26). Aristotle relates that Onomacritus is said to have received legislative training in his adopted home of Crete, a city in which he practiced the art of soothsaying and associated with the philosopher Thales (1274a26-27). After reporting these four supposedly historical facts concerning Onomacritus, Aristotle concludes his remarks about the Locrian. While he will proceed to deny the chronological accuracy of the tale alleging the association of Zaleucus, Charondas, Thales, and Lycurgus that the account of Onomacritus interrupts, Aristotle noticeably leaves the tradition concerning the first man to become skilled in the legislative art unchallenged and unqualified.

What are we to make of Aristotle’s account of Onomacritus? More sharply, why does Aristotle seem to go out of his way to include a tale about the first man to be skilled in legislation in a list that previously had included only men who were historically recognized as legislators? The solution to these questions is to be found in the personal description of Onomacritus that Aristotle presents. To begin with, it should be noted that the first descriptive statement Aristotle offers about Onomacritus is that he received his instruction in legislation on the island of Crete. Believed to have originated with Zeus and then to have been transmitted to his son Minos, the Cretan laws are commonly taken to be the oldest of Greek laws. Onomacritus, Aristotle thus implies, learned the legislative art in a city that is held to be ruled by the divine laws par excellence. Thus, there seems to be a connection between the fact that Onomacritus is a soothsayer and the fact that he is said to have learned about the legislative art in Crete. If the first man to become skilled in the art of legislation was a diviner, it is not entirely surprising that he would have received this skill in the city that is renowned for possessing the most ancient and divine laws.

What is unexpected, however, is the curious statement that Onomacritus is said to have been a companion of Thales. By noting a connection between the two men,
Aristotle invites his reader to wonder how Onomacritus's friendship with Thales contributed to his education in the legislative art. Aristotle thus implicitly raises the question of the relation of soothsaying and philosophy in the instruction of Onomacritus and, therewith, of the relation of prophecy and philosophy in the art of legislation tout court. The answer to this question seems to be that both the art of divining and philosophy were influences on the first man to become skilled in the legislative art. In his description of Onomacritus, Aristotle offers a picture of a man who is neither a mere "soothsayer" nor a pure philosopher, but a diviner who became skilled in legislation and who was the companion of a philosopher. 23 Accordingly, the legislative art is presented in the final chapter of book II of the Politics as first emerging in a soothsayer whose horizon of reflection had been broadened by his association with a philosopher. 24

The man who becomes skilled in legislation then occupies a middle position between the "one philosophizing in connection with each sort of inquiry" and the one "merely looking toward action" (1279b13-14). As a result, he will speak in a manner that is less exact than the philosopher, but for this reason more suitable to the kind of universalizing speech that laws need to embody (1282b4-6; NE, 1137b12-27) in order to inculcate "true opinion" in citizens (1277b27). 25 To this end, the legislator may at times incorporate into his laws a form of locution that is similar to the rhetoric used by the soothsayer. Recourse to preludes that speak of the designs of the gods or of the city in familial terms aid him in swaying the souls of the nonphilosophic citizenry into upholding his laws. Such means of persuasion are intended to moderate and educate the passions of citizens, so that they may come to appreciate the reasonableness of the city's laws.

The need for such rhetoric, however, implicitly testifies to the imperfection of the law as law, both in regard to its rationality and in its ability to address each individual case adequately. 26 The tale about Onomacritus and the nature of the beginnings of the legislative skill subsequently further elucidates what is implied in Aristotle's opposition to Hippodamus's proposal to honor innovations, namely, that laws do not have strength with respect to obedience apart from habit (1269a20). By describing Onomacritus as neither a mere soothsayer nor a philosopher, Aristotle's account of the first man to become skilled in legislation serves to point out that laws are not simply rational and, at the same time, to indicate how this defect can be addressed by appealing to a form of reason that is itself informed by passions. The presentation of Onomacritus, therefore, shows that Aristotle's criticism of Hippodamus's rationalism does not entail an endorsement of a "theological" position, but rather suggests the possibility and necessity of an alternative model of political rationalism.

At the conclusion of his treatment of Onomacritus, Aristotle recounts another tradition, which he similarly does not deny. This tale involves a man named Philolaus, a Corinthian who gave laws to the Thebans. By not calling into question the accuracy of the tale, Aristotle tacitly acknowledges that legislators are capable of transferring their skills from city to city. Aristotle reports that Philolaus is said
to have been the lover of Diocles, an Olympic victor who, like Oedipus, was forced to flee his native Corinth for Thebes upon learning of his mother’s incestuous passions for him (1274a34-35). Thus, despite what one learns of the transferability of the legislative art from the tale concerning Philolaus, the lawgiver presumably migrated to Thebes to be with his lover and not to become the city’s legislator. Aristotle further states that Philolaus and Diocles are buried “in full view of one another,” though their tombs face in opposite directions (1274a37-40). While Diocles’s continued disgust with his mother’s incestuous desires led him to position his mound so that Corinth would not be visible to him in death, his lover, Philolaus, requested that his tomb face his native city.

The tale, which is replete with references to the love of one’s own and of others as well as to what is domestic and what is foreign, seems to have some bearing on the legislation that Aristotle states is peculiar to Philolaus as a legislator. Aristotle maintains that Philolaus is known to have given the Thebans laws pertaining to childbearing. Philolaus’s distinctive legislation concerned adoptive laws that were intended to maintain the number of estates within the city. These laws were designed to avoid having to divide endlessly the number of lots in Thebes as a means of counterbalancing the city’s steadily increasing population. Philolaus thus addresses in law a problem that the legislator in the Laws failed to take seriously. In contrast to the legislator in the Laws, Philolaus attempts to curtail the poverty and crime that will eventually arise from legislators paying insufficient attention to the problems that result from a fixed number of inheritances and an increasing civil population. Philolaus’s attentiveness to the tensions that plague cities that do not acknowledge the potential dangers that can rise out of the household may be due to his own experience with Diocles. In loving a man whose household suffered from the inability to extend itself to anything outside of its intended boundaries, Philolaus saw firsthand the temptation of the household to turn radically in on itself and thus make life, either on the level of the household or of the city, unlivable. Adoptive laws therefore represent one kind of attempt to open the household up to the more encompassing life of the city. Whether Philolaus’s adoptive laws succeeded in this task, Aristotle does not say.

Whereas the first part of Aristotle’s list of legislators referred to the loftiest activity of the legislator, namely, the founding of a regime, the final section of chapter twelve acknowledges the need for legislators to concern themselves with matters involving crimes and punishments. Aristotle, in effect, closes chapter twelve by conceding that in their attempt to craft laws that aim at living well, legislators must not lose sight of the sober fact that most men are “swayed not by a sense of shame but by fear, and refrain from acting basely . . . because of the punishment it brings” (NE, 1179b10-13). The discussion in the concluding section of Aristotle’s treatment of legislators thus has something of the character of a descent.

The names of two of the three legislators mentioned in the final section of chapter twelve, Draco and Androdamas, are associated with the act of homicide,
the former by virtue of the nature of his punishments, the latter in connection with his drafting laws about the crime. Aristotle reports that Draco crafted laws for an existing regime and that the peculiarity associated with his legislation is the "harshness deriving from the size of the penalties" (1174b17-18). The remark is striking since prior to the discussion of Draco the principle Aristotle invoked to distinguish what is particular to a specific legislator had appealed to the kind of legislation the man enacted. Yet Aristotle sets Draco apart from other legislators not on the basis of the type of laws he instituted, but due to the kinds of punishments he attached to his laws. This is, in fact, the only instance in chapter twelve where Aristotle mentions the severity of a legislator's sentences.

Aristotle's presentation of Draco in the final chapter of book II is all the more striking given that it differs from the account of Draco he offers in the Athenian Constitution. Aristotle there seems to portray Draco as the political figure who presided over Athens' transition from something like village life to a closer approximation of city life (AC, 3,4, and 41). The kind of rule Draco would be expected to exercise then would stand somewhere in between that administered by the Cyclopes (1252b22-24) and that practiced by the statesman.

Prior to Draco's reign as a legislator, Athens was governed by the ancient constitution, an arrangement that Aristotle states only "diverged slightly from the monarchy" that was established when "the tribe-kings were created" (AC, 41.2). Draco, however, enacted a reform that diminished the influence of the monarchy by imparting an oligarchic element into the organization of the Athenian ruling offices and by providing Athens with its first written code of laws (AC, 41.2). Accordingly, while Draco's punishments were undoubtedly harsh, they may have been necessary given that at the time of his rule Athens was moving from an earlier, more barbarous existence to a less crude, if not wholly civilized, political way of life. Aristotle implies as much in his suggestion that Draco's ordinance prohibiting homicide constituted a substantial advancement in the adherence to lawfulness among the Athenians (AC, 7.1). It is thus somewhat of a puzzle as to why Aristotle does not acknowledge Draco as a founder of a regime in the twelfth chapter of book II of the Politics.

Perhaps Aristotle withholds conferring upon Draco the title of founder in part because his legislation only acknowledges the requital of evil for evil and not any of the higher concerns of justice, let alone those of nobility, that distinguish the life of the city from village life (1252b27-30; 1280a31-39). In contrast to founders such as Solon and Lycurgus, Draco did not draft laws with an eye to anything higher than the establishment and preservation of law and order. If founders are men who provide codes of law whose positive contents aim at promoting a particular conception of virtue and the good life, Draco is not a founder since his legislation performs the primarily negative function of restraining passions and crimes. Nevertheless, the political history recorded in the Athenian Constitution coupled with the sketch of the origins of political life offered in book I of the Politics force one to take seriously the possibility that the circumstances surrounding Draco's
rule, i.e., the state of the Athenians over which he ruled, called for laws with dramatically harsh punishments.

Aristotle follows his remarks about Draco with a discussion of the law that is peculiar to Pittacus. This legislator crafted a law that made drunken men who committed offenses pay a greater penalty than those who committed the same offenses while sober. By recognizing that men are more inclined to commit outrages when intoxicated, Pittacus looked not at the drunkard’s excuse, but to what is advantageous (1274b23).

Legislators like Pittacus seem to understand that lawmakers cannot focus exclusively on what men do: they must also pay attention to why men act as they do. External or internal factors, or a combination of the two, as in the case of drunkenness—either by wine or by other intoxicants such as philosophy—may cause men to act in ways they normally would not. Legislators must therefore attempt to address this problem by institutionalizing in their laws means of addressing the causes that incite men to transgress the law. Ironically, however, the last word on Pittacus in the Politics, namely, that he is popularly remembered in drinking songs, suggests that the likelihood of a legislator overcoming this problem depends less on the expediency of his legislation than it does on the powers of attraction possessed by those things that incline men to forget what the laws command and prohibit (1285a36-37).

In light of the preceding analysis of Aristotle’s list of legislators and its relation to the second book’s teaching on the themes of thought and action, a few additional observations are in order. Amid his discussion of men who have attempted prudently to bring speech and deed together in law, Aristotle refers to Plato and Phaleas (1274b6-14), but fails to mention either Hippodamus or the legislation he proposed. Plato and Phaleas accordingly appear to receive a greater hearing in the concluding chapter of book II than does Hippodamus. By cataloguing pieces of legislation that are peculiar to individual legislators, however, Aristotle tacitly acknowledges a partial truth contained in Hippodamus’s most notable legislative proposal. Aristotle’s list of legislators in some sense honors, albeit in a nuanced form, the innovation that is peculiar to the man who champions honoring all innovations. Perhaps by this Aristotle means to suggest that, if circumstances allow, men should attempt “to honor” useful innovations in legislation, but that honor in such cases takes the form of prudently and discreetly adopting the innovation in practice rather than imprudently celebrating the innovator and his innovation. Aristotle thus seems to provide a model for approaching the problem of altering laws that charts a middle course between the kind of rationalistic progressivism espoused by Hippodamus and the sacrosanct traditionalism heralded by Lycurgus. Stated differently, the teaching Aristotle here presents about carrying out prudential changes in the laws articulates an appreciation of the city as a political partnership that is at the same time less rationalistic and less theological than that offered by either Hippodamus or Lycurgus respectively.
Chapter Eleven

It further should be observed that the important question Aristotle leaves unresolved in discussing the alleged connection between Zaleucus and Charondas, namely, whether men can teach other men expertise in legislation, does find one kind of response in book II of the Politics. While Aristotle concludes that legend has not established that men are capable of instructing other men in the legislative art, the argument of the second book itself suggests that the question must be answered in the affirmative. By discussing regimes in speech and regimes in deed, as well as by considering the aims and origins of the legislative art, Aristotle casts himself in the role of the teacher of legislators. Accordingly, as it is presented in the second book of the Politics, an Aristotelian education in the prudential dimensions of legislating provides one possible alternative to chance in the formation of a legislator.

Moreover, by presenting a teaching that is, at least in principle, accessible to legislators and to potential legislators, Aristotle not only shows what type of man is the true teacher of legislators, but, also, indicates the full extent to which the legislative art is transferable. In contrast to the partial and particular legislative skill held by prudent men like Philolaus, i.e., actual legislators who wed their legislative skills to individual cities and their individual concerns, the universality of the kind of knowledge of legislation Aristotle possesses allows him to transfer this knowledge indefinitely to countless cities through his political writings (1297b35-38; NE, 1180a33). In this respect, the paradigmatic example of prudently bringing speech and deed together "as far as possible" finds its fullest expression not in the actions of the legislator or of the founder but in a certain dimension, or appreciation, of the prudential activity that is peculiar to Aristotle in his distinctive role as political philosopher.

Notes


6. Aristotle’s formulation at 1260b27-29 captures the tension in book II that Bartlett’s essay correctly highlights. Aristotle will study and attempt to describe what others only pray about. Stated differently, Aristotle will contemplate and come to know what others only pray the gods will allow them to see.

7. The inclusion of the list of legislators as part of the argument of book II is not mentioned in the opening chapter of the book. This has caused some modern scholars to question the authenticity of the twelfth chapter of the book. For the classic presentation of this argument see W.L. Newman, *The Politics of Aristotle*, vol. 2 (Oxford: Clarendon Press, 1887), 372. See also Ernest Barker, *The Politics of Aristotle* (Oxford: Oxford University Press, 1946), 91; and Trevor Saunders, *Aristotle: Politics Books I and II*, (Oxford: Clarendon Press, 1995), 166-67. To assert that chapter twelve must be of doubtful authenticity since the list of legislators is not explicitly mentioned at the beginning of book II is, however, to force the argument. More sharply, it is to adhere to an understanding of political reflection that is, as we shall see, reminiscent of Hippodamus’s approach to thinking about the political, for it acknowledges only the pure disengaged theorist as being capable of putting forward a proposal about the best regime. As this essay will argue, the analysis of legislators who attempted to bring thought and action together in law finds a natural home at the end of book II. Along these lines, see the arguments in favor of including chapter twelve in book II in Simpson, *A Philosophical Commentary*, 127-28, John Keaney, “Aristotle’s Politics 2.12 1274a22b-a28,” *American Journal of Ancient History* (1981) 97-100, and Jaffa, “Aristotle,” 80, 93-94.

8. Two things are particularly striking about Aristotle’s treatment of the *Republic* and the *Laws* in the second book of the *Politics*. First Aristotle directs his criticisms here at Socrates and not at Plato, suggesting that Aristotle objects to the *Republic* as a political model and not as a philosophical dialogue. Second, although he states that “all the discourses of Socrates are extraordinary: they are sophisticated, original, and searching” (1265a10-11), in his consideration of Socrates’ political proposals he treats Socrates’ discourses as if they were meant literally, that is, as if they were wholly unironic. Aristotle, in other words, in book II discusses Socrates’ speeches as would the man who failed to see that all of Socrates’ speeches are “extraordinary.”

9. At the end of the eighth chapter Aristotle promises to return to the question of whether traditional laws should be altered. Aristotle, however, does not explicitly return to this question in the remainder of the *Politics*. Nevertheless, throughout the *Politics* Aristotle frequently recommends that, if the circumstances allow, certain pieces of legislation prudently should be replaced by better or more fitting pieces of legislation. On the most immediate level, Aristotle’s proposals differ from those of Hippodamus in that Aristotle allows a political philosopher, namely, himself, to recommend in a work of political
philosophy that a certain city's laws be altered whereas Hippodamus would allow any man living within any regime the opportunity to change an "outdated" law. Yet, as will be drawn out below, this observation only begins to describe the differences between these two men on this matter.

10. Aristotle makes this remark as he reports that one of the measures that Minos took to ensure that the Cretan population did not grow too large was to provide "for relations between men" (1272a24-25).


12. See Aristotle's criticisms of oligarchic justice in *Politics*, 3.9.

13. Jaffa claims that Aristotle only mentions nine legislators in the final chapter of book II. See Jaffa, "Aristotle," 94. Jaffa further asserts that Onomacritus occupies the central place in the list of legislators. Aristotle, however, clearly identifies eleven men as actual legislators in chapter twelve. Jaffa's statement therefore seems to be based on either an arbitrary evaluation of which men in the list are and which men in the list are not legislators or on a simple miscalculation.

14. I follow Jaffa, Nichols, and Bartlett in taking Aristotle here to refer to the philosopher Thales of Miletus, see Jaffa, "Aristotle," 94; Nichols, *Socrates and the Political Community*, 173; and Bartlett, "Aristotle's Science of the Best Regime," 144. Lord (*Politics*, 253), Newman (*The Politics of Aristotle*, vol. 2, 379), Saunders (*Aristotle*, 169), and Peter Simpson (*The Politics of Aristotle* [Chapel Hill: University of North Carolina Press, 1997], 73) all assert that the reference at 1274a27 is to Thales the poet and not Thales the philosopher. This assertion is, however, questionable, particularly since Aristotle himself in no way distinguishes the Thales spoken of here from the Thales he has mentioned in either the first book of the *Politics* or during his discussion of the relationship between theoretical and practical wisdom in *NE*, 1141b4-8.

15. Cicero states that the democratic Ephorate restricted the rule of the Spartan kings in a way that is similar to the manner in which the tribunes of Roman plebes restrict the Roman consuls. See Cicero, *De re publica*, 11.33.

16. Plutarch takes issue with Aristotle's criticism of Lycurgus on this matter. Of Lycurgus's attempt to transform the character of the Spartan women, Plutarch remarks, that in forcing the women to undergo a serious training in gymnastics "the truth is he took in their case... all the care that was possible" (Plutarch, "Lycurgus" in *The Lives of the Noble Grecians and Romans*, vol. 1, trans. John Dryden [New York: The Modern Library, 1992, 64]). Plutarch, whose account of Lycurgus draws heavily on much of the history provided in book II of the *Politics*, further distances himself from the book's presentation of the Spartan lawgiver/founder by failing to mention Aristotle in the following remark: "And therefore all those who have written well on politics, as Plato, Diogenes, and Zeno, have taken Lycurgus for their model" ("Lycurgus," 80).

17. Aristotle's recounting that Pericles both diminished the power of the council of the Areopagus and instituted payment for juries exhausts his treatment in chapter twelve of the Athenian legislator immortalized in Thucydides' *The Peloponnesian War*. That Aristotle chooses to say little about Pericles in book II is not a feature unique to the *Politics*. In his *Athenian Constitution*, Aristotle also offers a comparatively brief consideration of Pericles' activities as a legislator. See, in particular, Pericles' noticeable absence in *Athenian Constitution* 41. Aristotle does state, however, that "Pericles came forward as a popular leader, having first distinguished himself while still a young man prosecuting the audits of Cimon who was a general" (*Athenian Constitution*, trans. H. Rackham.
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[Cambridge: Harvard University Press, 1992] 27.1). References to the Athenian Constitution are hereafter cited parenthetically in the text and abbreviated as AC. I have used Rackham’s translation, but made corrections where necessary. In connection with Aristotle’s remarks about Pericles and his further democratization of the law courts in the Politics, one should note that careful study of the Athenian Constitution reveals that the political health of democratic Athens depends in large part upon the conditions surrounding the organization of the city’s law courts.

18. Connected with Solon’s title as “head of the people” is the fact that Aristotle states that he was of high birth but of moderate wealth. See, in addition, Politics, 1296a16-21; however, note its immediate context.

19. In describing the character of these encounters, Aristotle presents Solon as an umpire mediating between the claims of the oligarchs and the people. Aristotle states that the people expected Solon’s reforms to redistribute all property whereas the oligarchs expected his reforms simply to change all outward appearances of injustice. See, in particular, AC, 5.1. Along similar lines, see Aristotle’s comparison of Solon’s and Phaleas’s proposals for property reform in Politics 1266b14-18.

20. Solon’s calculated attempt to have the Athenians learn to govern themselves by law stands in contrast to Lycurgus’s charge to the people of Sparta to leave his laws unchanged in perpetuity. As Aristotle presents him, Solon’s intention is less to move the people to the rule of his law as it is to rule of good laws simply. The founding of Sparta under Lycurgus thus has more of a personal element attached to it than does the founding of Athens under Solon. The difference between the two men’s approaches to the founding of a city perhaps best can be seen in Lycurgus’s death. Lycurgus’s suicide gave the founding of Sparta a kind of theological dimension not present in Solon’s founding of Athens. See Plutarch, “Lycurgus,” 78-79. In short, the actions of Lycurgus, more than those of Solon, fit the description of the legislator outlined in book II, chapter seven of Rousseau’s Social Contract.

21. Aristotle says nothing about the legislative activities of Zaleucus in chapter twelve of book II. Of Charondas, Aristotle provisionally states that there is nothing peculiar about his legislation (1274b4). He immediately adds, however, that Charondas was the first to introduce denunciation for cases involving perjury (1274b5). There is thus literally something peculiar to Charondas’s legislation but evidently not peculiar enough for Aristotle to acknowledge its distinctiveness. Aristotle’s account of Charondas as a legislator is further complicated by the fact that he notes that Charondas’s laws were more precise and more polished in their expression than those of “current legislators” (1274b7-8). Whatever is to be made of Aristotle’s admittedly perplexing treatment of Charondas, it is clear that he uses the example of Charondas to relate that the legislative art does not necessarily become more refined simply by the passage of time.

22. See, for example, Homer, Iliad, 13.450 and Plato, Laws, 624a-632d.

23. Aristotle’s account of Onomacritus thus in some ways foreshadows the medieval Islamic teaching on the Imam. See Alfarabi, The Attainment of Happiness, 1.57-58. It should be noted, however, that the Politics seems to have been unavailable to the medieval Islamic philosophers. See Averroes, Commentary on Plato’s Republic, 1.8. Despite the surface similarities between Aristotle’s presentation of Onomacritus and the Islamic teaching on the Imam, there are substantial differences between the two. Whereas the Imam is said to be perfect as a prophet, philosopher, lawgiver, and founder, Onomacritus’s claim to perfection in any of these offices is questionable at best: Aristotle fails to state that Onomacritus actually gave laws and in no way implies that he is a founder. As to Onomacritus’s skill as a diviner, see Herodotus, The History, 7.6.
24. In contrast, Bartlett argues that in the example of Onomacritus Aristotle asks “does the expertise in political affairs and, above all, the science of the founding of the best city, rely on knowledge accessible to the unassisted human mind or on superhuman inspiration? Does it owe its origins to ‘Thales’ or ‘Onomacritus’ (philosophy or prophecy, human reason or the gods)” (“Aristotle’s Science,” 144). Bartlett here radicalizes alternatives in a way that Aristotle’s text does not. Clearly the question of what source, i.e., unaided human reason or superhuman inspiration, should inform man’s political life is of the utmost importance. But Bartlett’s formulation seems to transform the question of what are the origins of legislative skill into the question of what is the best way of life simply. Stated differently, Bartlett here introduces the question of what way of life is better, the philosophic or the religious—a question to which Aristotle would undoubtedly affirm the former, into the text at a point where Aristotle appears to be suggesting that the art practiced by actual legislators is neither simply prophetic nor simply philosophic, but a confused mixture of the two.

25. Aristotle in fact subtly states that the legislator qua legislator also operates on the level of true opinion. Compare Aristotle’s argument in NE, 1141b23-1142b40 with his statement about the political philosopher being the architect of the end by which something is called either good or bad unconditionally in NE, 1152b1-4. See my “Aristotle on Pleasure and Political Philosophy: A Study in Book VII of the Nicomachean Ethics,” Interpretation: A Journal of Political Philosophy 24, no. 2 (Winter 1997): 172.  

26. Along similar lines, see Aristotle’s treatment of equity as a necessary corrective for the inadequacies of legal justice in NE, 1137a-1138b.

27. For a discussion of the possible import of Diocles’ resemblance to Oedipus, see Nichols, Socrates and the Political Community, 173.

28. In chapter twelve, Aristotle simply states that Androdamas gave laws about homicide and heiresses to the Chalcidians of Thrace. Apart from the report of Androdamas given here, nothing else is known of him.

29. Plutarch observes that Draco’s laws “were too severe, and the punishment too great: for death was appointed for almost all offenses, inasmuch that even those who were convicted of idleness were to die; and those that stole a cabbage or an apple were made to suffer just as villains that committed sacrilege or murder . . . and he himself, being once asked why he made death the punishment of most offenses, replied, ‘Small ones deserve that, and I have no higher for the greater crimes’” (Plutarch, vol. 1, “Solon,” 117).

30. Aristotle relates this observation amid his description of Solon’s actions as a legislator. Aristotle there seems to go out of his way to state that Solon replaced all of Draco’s laws with the sole exception of his prohibition against homicide. Aristotle thus appears to be intimating that even founders such as Solon do not establish entirely new modes and orders.