Legal Subjectivity and the Basis of Citizenship in Aristotle's Philosophy of Law

Dr Burns, University of Nottingham
Legal Subjectivity and the Basis of Citizenship in Aristotle’s Philosophy of Law

Tony Burns

School of Politics & International Relations

University of Nottingham, UK
Abstract

This paper considers Aristotle’s views on the nature of the legal subject and the basis of citizenship, specifically in relation to the doctrine of corrective justice outlined in Book V of the *Nicomachean Ethics*. It may be seen as a contribution to a debate over the issue between Ernest J. Weinrib and Steven J. Heyman which took place in a special issue of *Iowa Law Review* devoted to corrective justice in 1991-92: Corrective Justice and Formalism: The Care One Owes One’s Neighbor, *Iowa L. Rev.* 77 (1991-92), 403-864. The paper argues that the interpretations of Aristotle which are offered by Weinrib and Heyman respectively are diametrically opposed to one another. Each of them is partial and ‘one-sided,’ and for this reason neither of them adequately captures Aristotle’s true position so far as this issue is concerned. The paper attempts to show that these two readings of Aristotle might be combined so as to create a third reading which steers a *via media* between them. It is suggested that this third reading has all of the strengths and none of the weaknesses of the readings presented by Weinrib and Heyman, as well as accurately capturing Aristotle’s views on the subject with which it deals.
## Contents

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>1 Ernest J. Weinrib’s Interpretation of Aristotle as a Forerunner of Kant and Hegel</td>
<td>3</td>
</tr>
<tr>
<td>2 Steven J. Heyman’s Communitarian Critique of Weinrib</td>
<td>6</td>
</tr>
<tr>
<td>3 The Significance of Aristotle’s Defence of Natural Slavery</td>
<td>8</td>
</tr>
<tr>
<td>4 Aristotle as a Forerunner of Stoic Cosmopolitanism?</td>
<td>19</td>
</tr>
<tr>
<td>5 A Theoretical Synthesis of the Views of Weinrib and Heyman</td>
<td>20</td>
</tr>
<tr>
<td>Conclusion</td>
<td>22</td>
</tr>
</tbody>
</table>
Introduction

In this paper I discuss Aristotle’s views on legal subjectivity and the basis of citizenship, as these are to be found (explicitly or implicitly) in his treatment of the notion of corrective justice in Book V of the *Nicomachean Ethics.*\(^1\) According to Aristotle in the *Nicomachean Ethics* the system of corrective justice of a *polis* treats those with which it deals, that is to say the citizens of the *polis* in question, as ‘equals.’ This raises the issue of what, in Aristotle’s view, provides the basis for this presumption of equality? There is an interesting debate about this issue between Ernest J. Weinrib and Steven H. Heyman in the pages of *The Iowa Law Review.*\(^2\) According to Weinrib, the views of Aristotle regarding the nature of the legal subject closely resemble those of Kant and Hegel. For all three of these thinkers consider the legal subject to be an ‘abstract moral person.’ This is a reading of Aristotle which Heyman emphatically rejects. I shall subject the interpretations of Aristotle offered by both Weinrib and Heyman in respect of this particular issue to critical examination. I shall argue that although there is at least something to be said for each of these interpretations, nevertheless at the same time it could also be said that they are of limited

---

\(^1\)This paper is based on Tony Burns, *Aristotle, Stoicism and Cosmopolitan Political Thought.* A paper presented at an international conference devoted to the theme of *Cosmopolitanism: Past and Present,* University of Dundee, 7-11 June 2007.

value, because they are partial or ‘one-sided.’ What is required, therefore, is some kind of theoretical synthesis of them both.

**Part One:**
**Ernest J. Weinrib’s Interpretation of Aristotle as a Forerunner of Kant and Hegel**

Weinrib points out that at the heart of Aristotle’s doctrine of corrective justice is the ‘assertion that “the law treats them as equals”?’ Aristotle’s analysis, Weinrib observes, ‘presupposes the equality of the two parties to a transaction.’ There is however, Weinrib claims, a ‘troubling lacuna in Aristotle’s explication of corrective justice.’ For what Aristotle does not do is consider explicitly the question: ‘In what respect are the parties equal?’ Weinrib notes that the ‘parties’ in question ‘cannot rightly be treated as equals unless they are equal in some relevant respect.’ So what exactly is it, according to Aristotle, that puts them ‘on an equal footing?’ Weinrib claims that because Aristotle does not address this issue directly, he is unable to ‘help us unravel the mystery that his account of corrective justice presents.’ In Weinrib’s opinion this omission is ‘crucial, even if understandable.’ It is crucial because ‘corrective justice remains opaque to the extent that the equality that lies at its heart is unexplained.’ It is understandable because this issue ‘has become the object of serious reflection only in the last few centuries.’ It is, indeed, Weinrib maintains, addressed explicitly and self-consciously for the first time only in the eighteenth century, in the legal philosophies first of Kant then of Hegel.

---

3Weinrib, Corrective Justice, 419.

4Weinrib, Corrective Justice, 421.

5Ibid.

6Weinrib, Corrective Justice, 404.
Weinrib maintains that one of the main purposes of his discussion of Aristotle’s views on corrective justice is to fill this lacuna in Aristotle’s account by ‘connecting corrective justice to the legal philosophies of Kant and Hegel.’\(^7\) In his view, the assumed equality which lies at the heart of Aristotle’s theory of corrective justice is in fact ‘the abstract equality of free purposive beings under the Kantian and Hegelian concepts of right.’\(^8\) Thus, Aristotle’s account of corrective justice ‘coalesces with the great modern philosophies of natural right in a single approach to the understanding of private law.’\(^9\) At first sight, when Weinrib suggests that the views of Kant and Hegel might supplement or ‘fill the lacuna’ in Aristotle’s account of corrective justice, it is not clear whether he thinks that this is a matter of adding something completely new to Aristotle’s analysis, which was not already there; or, alternatively, that it is a matter of drawing out and stating explicitly what was already there in the thought of Aristotle, albeit only implicitly. The ambiguity of Weinrib’s position in respect of this issue is clearly evident in his claim that ‘the Kantian and Hegelian versions of natural right dovetail with Aristotle’s description of corrective justice.’\(^10\) A careful reading of Weinrib’s article, however, supports the latter rather than the former reading of his position. He says, for example, that ‘the differences between the Kantian-Hegelian and the Aristotelian accounts of private law are expository, not substantive.’\(^11\) And he also maintains that this ‘convergence of corrective justice and natural right bridges the oft asserted chasm, between ancient and modern conceptions of law.’\(^12\)

\(^7\) Ibid.
\(^8\) Ibid.
\(^9\) Ibid
\(^10\) Weinrib, Corrective Justice, 422.
\(^11\) Weinrib, Corrective Justice, 424.
\(^12\) Ibid.
According to Weinrib, even today Aristotle’s theory of corrective justice provides us with a sound basis for an understanding of issues relating to private law. On the other hand, however, Aristotle’s views on this subject are evidently inconsistent with the broad thrust of Aristotle’s ethical thought as a whole. As Weinrib puts it, Aristotle’s theory of corrective justice ‘defied explication in terms of his own ethics.’¹³ The reason for this is because Aristotle’s ethics is a ‘virtue ethics.’ The ‘object of Aristotle’s ethics generally,’ Weinrib notes, ‘is to elucidate the excellencies of character,’ or the virtues, ‘that mark proper human functioning.’ Consequently Aristotle’s theory of corrective justice, which presupposes the existence of moral rules or laws and the duties associated with them, ‘obviously stands apart from Aristotle’s general concerns.’¹⁴ I note in passing that Weinrib does not consider another possible reason why Aristotle’s views on corrective justice might be thought to be logically inconsistent with the broad thrust of his ethics more generally. This is because Aristotle’s ethical thought is based upon the assumption of a natural inequality which exists between human beings, whereas, on Weinrib’s reading, Aristotle’s doctrine of corrective justice appears to be based, to the contrary, on the assumption of the natural equality of human beings as abstract ‘moral persons,’ in the sense in which both Kant and Hegel understood that expression.

¹³Weinrib, Corrective Justice, 404.

¹⁴Weinrib, Corrective Justice, 421. I criticize the view that Aristotle subscribes to a type of virtue ethics which attaches no importance at all to the notion that ethical life is a matter of obedience to moral; rules or laws in Aristotle, in Political Thinkers from Socrates to the Present, 2nd ed., 85 (Boucher &Kelly eds., 2009); and in Whose Aristotle? Which Marx? Ethics, Law and Justice in Aristotle and Marx, 8 Imprints: Egalitarian Theory and Practice, 2, 125 (2005).
Weinrib’s reading of Aristotle is somewhat surprising. Most commentators would consider any attribution to Aristotle of a belief in the natural equality of all human beings insofar as they are individual moral agents or ‘abstract moral persons’ to be an historical anachronism. They would, therefore, almost certainly argue that something has gone wrong with Weinrib’s analysis somewhere. This is the view of Steven J. Heyman, who disagrees with Weinrib and argues that for Aristotle what makes the two parties affected by corrective justice and the laws associated with it equals is not the fact that they are abstract moral persons but simply the fact that they are both citizens of the same polis – although, strangely, Heyman does not actually employ the word ‘citizen’ in his own account of Aristotle’s views. According to Heyman, juridical equality for Aristotle is based on the notion of ‘free status.’ Aristotle is of the opinion that ‘all free men are arithmetically equal’ specifically ‘with respect to that status.’ Consequently, ‘to injure another violates his freedom and disturbs the equality between injurer and victim, giving rise to an unjust gain and loss.’ For Aristotle the role of corrective justice is, Heyman maintains, ‘to annul this injustice and thereby restore equality.’

Against Weinrib, Heyman insists that Aristotle’s view of freedom is, therefore, ‘fundamentally different’ from that of Kant and Hegel. This is so because for Kant and Hegel ‘freedom is rooted in the ability of the individual will to abstract from all particular content, and thereby to attain the capacity for free self-determination,’ whereas for Aristotle this is (allegedly) not the case. Heyman also maintains that the ‘abstract conception of the equality’ of such ‘autonomous individuals’ which is usually associated with this way of thinking about freedom is also not to be found in the writings of Aristotle. In his view, this idea of the equality of all moral

---

15Steven J. Heyman, Aristotle on Political Justice, 860.
agents as ‘persons’ does indeed lie at the heart of the legal philosophies of Kant and Hegel, especially their views on ‘private or abstract right.’ Again, however, Heyman maintains that for Aristotle this is not the case.\(^6\) According to Heyman, then, the views of Aristotle differ fundamentally from those of both Kant and Hegel because although in Aristotle’s opinion corrective justice does consider the parties with which it deals as equals, nevertheless the equals in question are not considered to be equals because they are moral persons, or in virtue of the fact that they are human beings, but again simply because they happen to be citizens of the same polis. Heyman would, therefore, emphatically reject Weinrib’s claim, cited above, that the convergence of corrective justice in Aristotle and natural right in Kant and Hegel is something which bridges the ‘chasm’ which is usually thought to exist between the ‘ancient and modern conceptions of law.’

Now there is a sense in which Heyman is obviously correct here. For nowhere does Aristotle discuss explicitly the question of what characteristic feature it is, exactly, the which makes the citizens of a polis equals and thereby justifies their possession of citizenship. Nor, consequently, does Aristotle ever state explicitly that the characteristic feature in question is the fact that all citizens are moral persons. He simply asserts that as citizens they are equals, and the laws of the polis of which they are members ought, therefore, to treat them equally. Nevertheless, it seems to me to be entirely legitimate for us to consider what assumptions Aristotle makes implicitly about the grounds upon which the attribution of citizenship is based. What are the qualities which Aristotle assumes can be found in all of the citizens of a polis, the possession of which both justifies their being citizens and differentiates them from those who are (justifiably) not citizens? In order to shed light on this issue it is helpful to consider Aristotle’s views on slavery.

\(^6\)Ibid.\(\ldots\)
Part 3: 
The Significance of Aristotle’s Defence of Natural Slavery

Weinrib makes no reference to slavery when considering Aristotle’s views regarding the basis of the distinction between citizens and non-citizens in ancient Greece. This is surprising, not only because in fourth century Athens slaves were an important category of ‘non-citizen,’ but also because Aristotle provides us with an extensive discussion of his own views about slavery in the *Politics*. It is fruitful, therefore, to consider Weinrib’s thesis in the light of what Aristotle has to say about slavery. If we can establish what, in Aristotle’s opinion, are the qualities which *slaves* possess, in virtue of which they are indeed slaves and not citizens or ‘free men,’ then we will have established what Aristotle considers to be the basis for possession of citizenship, and hence also for that equality which, according to Aristotle, exists between the citizens of a *polis* for the purposes of corrective justice. In Book I of the *Politics* Aristotle makes an important distinction between those who in his opinion are slaves by ‘nature’ and those who are slaves by ‘convention.’ In what follows, unless it is stated otherwise, I shall consider only Aristotle’s views on natural slavery.

Given Weinrib’s account of Aristotle’s notion of corrective justice, it seems likely that he [Weinrib] would take the view that Aristotle assumes implicitly that what differentiates the

\[\text{\footnotesize\textsuperscript{17}}\] For this see The Tragedy of Slavery: Aristotle’s *Rhetoric* and the History of the Concept of Natural Law, 24 History of Political Thought, 1, 16 (2003); and Tony Burns, Aristotle and the Politics of Recognition in the Ancient World, in *Global Justice and the Politics of Recognition* (Burns & Thompson eds., 2010 forthcoming).

citizens of a *polis* from those who are natural slaves is precisely the fact that citizens are moral persons, that is to say human beings. This suggests that, in Weinrib’s opinion, it is for this reason that Aristotle considers these citizens to be equals in relation to one another. It also suggests that it is for this reason that Aristotle maintains that the citizens of a *polis* are rightly considered to be equals by its system of political justice, or its laws. Aristotle’s natural slaves, on the other hand, allegedly lack the qualities associated with moral personality and with humanity, and are consequently not considered to be the ‘equals’ of the citizens of the *polis* with which they are associated, especially of course those citizens who are their masters. That is why, in their case, Aristotle took the view that slavery is not unjust. At least, it seems to me that such a view would be entirely consistent with the broad thrust of Weinrib’s analysis of Aristotle’s views on corrective justice. The question arises, therefore, of whether this is a plausible account of Aristotle’s views on natural slavery? If it is, then there is something to be said for Weinrib’s thesis, despite the criticisms which Heyman makes of it. If it is not, then Weinrib’s claim that Aristotle’s theory of corrective justice relies on the assumption that all of the parties concerned are ‘equals’ because they are ‘moral persons’ must be rejected.

We may begin by noting that at the beginning of the *Politics* Aristotle does present a view of human nature according to which the essence of what it is to be a human being is a capacity for ethical life, or a life of justice. This is what Aristotle has in mind when he says that ‘man’ (*sic*) is a ‘social and political animal’ destined to live together with others under the laws associated with a particular political community or *polis*.19 Bearing this in mind, we may now consider whether or not Aristotle considered the people whom he refers to as natural slaves in the *Politics* to be human beings in this sense. With respect to this issue Aristotle’s opinions are inconsistent. He expresses different views in different texts, and sometimes even within the same

text. It is true that there are occasions when Aristotle takes the view that those whom he considers to be ‘natural slaves’ are definitely also human beings. Consequently, if Aristotle were consistent, the justification for their condition of slavery is not, and could not be, the fact that they differ from citizens in this particular respect. Thus, for example, at one point in the Politics Aristotle asserts that ‘some human beings are by nature free, and others slaves.’ And elsewhere in the Politics he suggests that since even natural slaves ‘are human beings’ and therefore, as such, ‘share in rational principle,’ it ‘seems absurd to say that they have no virtue.’ Aristotle also expresses similar views in the Nicomachean Ethics, although it is unclear from the context whether his remarks are intended to apply to those whom he considered to be ‘natural slaves,’ to ‘conventional slaves,’ or to both. There, in the course of a general discussion of the nature of ‘friendship,’ Aristotle considers the question of whether a master might possibly be friends with one of his slaves. Aristotle equivocates when answering this question. As Aristotle himself puts it: ‘Qua slave then, one cannot be friends with him.’ However, ‘qua human being one can.’ For, he goes on, ‘there seems to be some justice between any human being and any other’ provided they can ‘share in a system of law.’ Therefore, Aristotle concludes, because there can be justice between master and slave, ‘there can also be friendship’ with a slave, at least ‘in so far as he is a human being.’

---

20 Aristotle, Politics, I, 5, 1255a1-2, 1991. The translation in the Works is by Benjamin Jowett, who invariably uses the English word ‘man’ when referring to human beings. I have taken the liberty of substituting the expression ‘human being’ for this throughout.


If we interpret Aristotle as holding the view that what differentiates citizens from those non-citizens who are natural slaves is *not* the fact that the former are human beings, and therefore moral persons, whereas the latter lack this quality, then this evidently counts against Weinrib’s thesis that for the purposes of Aristotle’s theory of corrective justice what *makes* those who are considered to be equals in the eyes of the law, or equals as citizens, and what differentiates them from those who, like natural slaves, are *not* citizens, is precisely the fact that the former possess moral personality, whereas the latter do not. For, as we have seen, Aristotle associates the notion of humanity with that of a capacity for ethical life (Weinrib’s ‘moral personality’). But on the reading we are currently considering Aristotle thinks that both citizens and natural slaves are human beings and therefore, as such, possess the same capacity for ethical life. In short they are both equally ‘moral persons.’ It cannot, therefore, be the case that what makes the citizens of a *polis* the citizens which they are, and what differentiates them from Aristotle’s natural *slaves*, is the fact that the former possess moral personality, whereas the latter do not. If this is true, however, then neither can it be the case, as on this view Weinrib erroneously claims, that for Aristotle the basis of citizenship is possession by all citizens of such a moral personality. At the very least, what this reading suggests is that for Aristotle possession of such a moral personality is a necessary condition of citizenship only, and not a sufficient condition.

Similarly, one could also argue that not all non-citizens in ancient Athens were slaves. Some (the *metics*) were resident aliens, or the citizens of other *poleis*, as indeed was Aristotle himself. Presumably, then, Aristotle would have conceded that these individuals shared in the possession of the qualities associated with moral personality to exactly the same extent as Athenian citizens, and yet, even so, they were not treated by Athenian law as the equals of Athenian citizens. It is implausible therefore to suggest that, in *their* case, Aristotle would have wished wish to argue that the reason why they were *not* Athenian citizens is because, like natural
slaves, they lacked the qualities associated with moral personality. Turning the argument around, this line of reasoning also suggests, therefore, that in Aristotle’s thinking the basis for citizenship is again not possession of moral personality. At the very least it indicates, once more, that Aristotle saw this as a necessary but not a sufficient condition for the attribution of citizenship.

On the other hand, though, things are not quite so clear cut as this. For there is at least some evidence in Aristotle’s writings which undoubtedly supports Weinrib’s thesis. For at times Aristotle does say things which suggest that in his opinion what makes those non-citizens who are natural slaves the slaves that they are, and justifies their also being legal slaves, is precisely the fact that they lack moral personality, as Aristotle understands it, and hence that they are not really human beings at all in the strict sense of the term. And this does suggest that Aristotle was of the opinion that at least one of the things which makes ‘free men’ the citizens that they are is the fact that, unlike natural slaves, they do possess a capacity for living an ethical life. For example, at one point in the Politics Aristotle tells his readers that ‘a state exists for the sake of a good life, and not for the sake of life only.’ For ‘if life only were the object, slaves and brute animals might form a state, but they cannot, for they have no share in happiness or in a life of free choice.’

23 Here Aristotle makes it very clear that he thinks that there is no significant difference between a slave (I assume he means a natural slave of the kind discussed earlier in Book I of the Politics) and a ‘brute animal.’ For what is lacking in both, in his opinion, is the human capacity for ‘free choice.’ Consequently both slaves and animals are equally incapable of living that ‘good life,’ that is to say the ethical life, which Aristotle thinks is the life appropriate for human beings. Similarly, Aristotle claims elsewhere that ‘the slave [i.e. the natural slave - TB] has no deliberative faculty at all.’

24 And he also states in both the Politics and the

---

23 Aristotle, Politics, III, 9, 1280a32, 2032.

Nicomachean Ethics that slaves of this kind (and perhaps of all kinds) are merely ‘living tools or instruments,’ who purpose is simply to be used, instrumentally, by their masters. ‘Instruments,’ Aristotle says, ‘are of various sorts.’ Some ‘are living, others lifeless.’ A ‘possession,’ he goes on, is ‘an instrument for maintaining life’ and ‘a slave is a living possession.’ Thus, for Aristotle, there is no significant difference between inanimate objects, ‘brute’ animals, and natural slaves. These are all items of property or ‘instruments’ whose function is to serve the interests of the human beings who are their masters. It is in this light that we should interpret Aristotle’s assertion that ‘he who participates in rational principle enough to apprehend, but not to have, such a principle, is a slave by nature.’ According to Aristotle ‘the lower animals cannot even apprehend a principle,’ but rather simply ‘obey their instincts.’ However, he continues, ‘the use made of slaves and of tame animals is not very different,’ for in both cases ‘their bodies minister to the needs of life’ of their masters.

In the case of those who are the masters, such a life is again a moral or an ethical life, a life of justice. It is not surprising, therefore, that Aristotle is prepared to take very seriously the question of whether natural slaves are capable of living a life of this kind, as well as the possibility that they may actually lack this capacity. As Aristotle puts it, ‘a question may indeed be raised, whether there is any excellence [virtue – TB] at all in a slave beyond and higher than merely instrumental and ministerial qualities - whether he can have the virtues of temperance, courage, justice, and the like; or whether slaves possess only bodily and ministerial qualities?’ Aristotle is acutely conscious of the relevance of this question for the debate about the justice or injustice of slavery, and of the problems which it poses for those like himself who think that

some individuals are natural slaves and that, at least in their case, slavery could not be said to be unjust. He notes that ‘whichever way we answer’ this question ‘a difficulty arises.’\textsuperscript{28} For in the first place if it allowed that slaves do ‘have virtue,’ then ‘in what will they differ from freemen?’\textsuperscript{29} That is to say, if it is admitted that so far as their capacity to live an ethical life is concerned there is no significant difference at all between a natural slave and a free citizen, and that slaves and citizens are equals in this particular regard, then what possible moral justification could there be for slavery? Such an admission appears at least to amount to an acknowledgement that slavery of this particular kind is indeed unjust, precisely because it involves treating unequally those who are in fact by nature equal. On the other hand, however, if it is argued that what differentiates natural slaves from citizens or free men is the fact that slaves lack the capacity for ethical life (Weinrib’s moral personality) whereas citizens do not – and hence that natural slaves are not properly speaking human beings at all – then, as Aristotle very well understood, this also serves to undermine the institution of slavery, albeit for a quite different reason. For such a view, if taken seriously, implies that natural slaves are incapable of performing the moral duties associated with their particular station in society. Indeed, as Hegel was later to observe, it implies that those who are slaves have been placed completely outside all human society and that, in consequence, because they have no moral or legal rights, they cannot be said to have any duties either. As Hegel states, ‘a slave can have no duties; only a free man has them.’ For ‘if all rights were put on one side and all duties on the other,’ then the ‘whole’ which is the ethical relationship binding society together ‘would be dissolved, since their identity alone is the

\textsuperscript{28}Ibid.

\textsuperscript{29}Ibid.
fundamental thing, and it is to this that we have to hold fast.\textsuperscript{30} This is something which, not surprisingly, Aristotle was most unwilling to accept. Indeed there are numerous passages in the \textit{Politics} where he argues that, although slaves do not have any \textit{rights}, nevertheless it is important that they be educated in such a way that they perform their \textit{duties} voluntarily and conscientiously.\textsuperscript{31}

A further observation supporting the claim that there are occasions when Aristotle does not consider natural slaves to be human beings at all is the following. If Aristotle thought that even his natural slaves were human beings, then he must have also thought that not \textit{all} human beings possess the same capacity for moral personality, and hence also the same moral worth. But what then, in his view, are the features which those individual human beings who \textit{do} possess those qualities associated with moral personality (Aristotle’s citizens), and those which do \textit{not} (Aristotle’s natural slaves), have in common in virtue of the fact that they \textit{all} might be said to be


\textsuperscript{31}See Aristotle, \textit{Politics}, I, 13, 1260a1-2, 1999: ‘If he [a slave] be licentious and cowardly, he will certainly not do his duty’; \textit{Politics}, I, 13, 1260a16-17, 1999: ‘all should partake of them, but only in such manner and degree as is required by each for the fulfillment of his duty’; \textit{Politics}, I, 13, 1260a34-36, 2000: ‘Now we determined that a slave is useful for the wants of life, and therefore he will obviously require only so much virtue as will prevent him from failing in his duty through cowardice or lack of self-control’; \textit{Politics}, I, 13, 1260b5-6, 2000 ‘It is manifest, then, that the master ought to be the source of such excellence in the slave, and not a mere possessor of the art of mastership which trains the slave in his duties.’
human beings? If it is true that Aristotle’s natural slaves lacked a capacity for ethical life, and yet nevertheless remained human beings, this seems to imply that Aristotle has a lowest common denominator understanding of human nature, such that the qualities associated with it have nothing at all to do with those features in virtue of which human beings possess a moral personality. But such an interpretation of Aristotle flatly contradicts what Aristotle says at the beginning of the *Politics* about human nature, especially of course his claim that human beings are social and political animals whose function is to live an ethical life.

Given this, it might be asked how, then, could Aristotle possibly justify the enslavement of those he considered to be natural slaves? We have seen that for Aristotle justice is a matter of treating equals equally and unequals unequally, or of treating like cases alike. We have also seen that Aristotle does not consider natural slavery to be unjust. Given his understanding if justice, this can only be because he does not consider masters and slaves to be equals. For if they were indeed equals then, given the fact that within the institution of slavery they are treated as if they were unequals, it would follow that slavery *would* have to be regarded as unjust, a conclusion which Aristotle evidently wishes to avoid. But how, if his views are to remain logically consistent, *could* Aristotle avoid this conclusion if he also accepted that those who are natural slaves are indeed human beings?

One possibility, here, is that although Aristotle accepts that slaves are indeed human beings, and therefore in *certain* respects at least the equals of their masters. Nevertheless in *other* respects they are not; and it is for this reason that slavery can be justified. Alternatively, it might be suggested that although Aristotle is willing to concede that his natural slaves do indeed possess the necessary qualities to be found in all human beings, at least to a certain *degree*, nevertheless they do not possess them to a sufficiently great extent to justify their inclusion in the category of those human beings who are also citizens. Aristotle does in fact suggest this at one
point in the *Politics*, when he says that so far as the moral virtues are concerned ‘all should partake in them,’ including therefore his natural slaves, but only in such manner and degree as is required by each for the fulfillment of his duty.’\(^{32}\) On the other hand, though, Aristotle also says in the same place that, so far as moral autonomy, or the capacity for both self-rule and rule over others, is concerned, this is not a matter of degree. As Aristotle puts it, ‘nor can we say that this is a question of degree, for the difference between ruler and subject is a difference of kind.’\(^{33}\)

Moreover, it is at precisely this point in the *Politics* that Aristotle insists that a natural slave ‘has no deliberative faculty at all.’\(^{34}\)

Given Aristotle’s reluctance to defend natural slavery by an argument of this kind, it is arguable that there are indeed logical difficulties involved in his assumption both that his natural slaves are indeed human beings and that in their case slavery could not be said to be unjust. For this logical inconsistency to be removed, Aristotle would have to abandon either one or the other of these two assumptions. However, given what we know about his views on slavery from the *Politics*, it seems most unlikely that he would have been prepared to abandon the second of them. It seems much more plausible to suggest that Aristotle would rather have abandoned the first. Indeed, we have seen that there is at least some evidence in the *Politics* that he did at times take seriously the suggestion that his natural slaves are not, properly speaking, human beings at all.

It is interesting to speculate about how the ‘anonymous opponents of slavery’ referred to by Aristotle in Book I of the *Politics* might have responded to such an argument. One suspects that presented with this question they would have argued that if it is true that Aristotle’s natural slaves are indeed human beings, and therefore in some respects at least the equals of their masters, then

---

\(^{32}\) Aristotle, Politics, I, 13, 1260a16-17, 1999.

\(^{33}\) Ibid.

\(^{34}\) Aristotle, Politics, I, 13, 1259b36-37, 1999.
it follows that their slavery should be condemned as unjust, according to Aristotle’s own understanding of justice. From their point of view, Aristotle’s unwillingness to accept this indicates not only a logical inconsistency in his thinking, but also a certain moral blindness in so far as the issue of the rights and wrong of slavery is concerned.\textsuperscript{35}

\textbf{Part 4: Aristotle as a Forerunner of Stoic Cosmopolitanism?}

We saw earlier that one possible objection to Weinrib’s claim that for Aristotle citizenship is associated with possession of an abstract moral personality is the counter-claim, made by Steven Heyman, that it would be historically anachronistic to attribute to Aristotle the view that corrective justice deals with individual moral agents who are considered to be equals because they are moral persons. Another way of expressing this criticism would be to claim that Aristotle thinks of the parties associated with any particular system of corrective justice as being the citizens of a particular historically given \textit{polis}. On this view he thinks of them as Athenians, or Corinthians, for example, but emphatically \textit{not} as human beings. Indeed, to think of individual moral agents as moral persons in the abstract, or as human beings, rather than as the citizens of a particular \textit{polis}, is something which is usually associated (rightly) with the later history of political thought after Aristotle. It is true, of course, that this way of thinking does not by any means begin with Kant or Hegel. Nor is it modern. We find it, for example, in the cosmopolitan

\textsuperscript{35}For this see Burns, The Tragedy of Slavery: Aristotle’s \textit{Rhetoric} and the History of the Concept of Natural Law, 18-31; also ‘Was There a ‘Discourse of Abolition’ in Ancient Greece?’ A paper presented at a conference devoted to the theme of \textit{Discourses of Abolition: The Removal of Slavery}, The Institute for the Study of Slavery, University of Nottingham, 13-15 September 2004.
political thought of the Greek and Roman Stoic philosophers.\textsuperscript{36} Nevertheless, it is a way of thinking which is usually considered to post-date Aristotle and the political thought of classical Greece. Consequently, it remains the case that for the many commentators who take this view any attempt to attribute this belief to Aristotle himself must involve historical anachronism. Moreover, the reason for this is clear. It is that anyone who thinks of moral agents as human beings in the abstract, rather than as historically situated subjects or selves, rooted in a particular political community, must necessarily be committed (in some sense) to a belief in the natural equality of all those who are considered to be human beings. This, however, is a belief which does not fit at all well with the general tenor of Aristotle’s political thought as it is usually understood.

A moment’s thought, however, indicates that things are not by any means so simple as this. This is so because, as is evident from what he says about human nature at the beginning of the Political, Aristotle does possess the concept of what it is to be a human being (anthropos). It follows from this, however, that Aristotle must also possess an understanding of the characteristic features which, in his view, human beings must possess in common, the features in virtue of the possession of which they are all rightly said to be human beings. But if in Aristotle’s view all of the individuals who are rightly said to be human beings possess these same features, and thereby participate in the same human essence, then there is at least one obvious sense in which even Aristotle would have to concede that all human beings are (and must necessarily be) in at least some respects by nature equal. We may conclude, then, that Aristotle not only possessed the idea of what it is to be a human being, but also that he had an understanding of what it would mean to claim that all human beings are by nature equal. It cannot be the case, therefore, that the attribution of such ideas to him involves historical anachronism.

\textsuperscript{36}See again Burns, Aristotle, Stoicism and Cosmopolitan Political Thought.
Now it seems obvious that there is an important sense in which Aristotle considered human beings to be by nature unequal. Hence there is also an important sense in which it is perfectly true to say that a belief in the natural equality of human beings has no part to play in Aristotle’s political thought. But it is important to be clear why this is the case. To be more specific, the reason for this is not because Aristotle actually lacked the concept of what it is to be a human being, or indeed that of the natural equality of all human beings. It is, rather, because although he possessed these concepts he nevertheless rejected the beliefs associated with them by the ‘anonymous opponents of slavery’ to whom he refers in Book 1 of the Politics (one cannot, of course, reject something of which one has no conception). Again, therefore, it is not the case that Aristotle was unaware of the possibility that individuals might be thought of as human beings, or as ‘equals’ because they are human beings. Nor would the attribution of such beliefs to him be historically anachronistic. My conclusion, then, is that despite the criticisms which Heyman makes of it, there is at least something to be said for Weinrib’s claim that Aristotle’s theory of corrective justice does presuppose the assumption on Aristotle’s part that a necessary if not a sufficient precondition for possession of citizenship, and hence also for that equality which exists between the citizens of a polis so far as its system of corrective justice is concerned, is indeed that moral personality or capacity for ethical life which all human beings possess in common.

Part 5:
A Theoretical Synthesis of the Views of Weinrib and Heyman

This is not to say, however, that Heyman’s critique of Weinrib is completely wide of the mark. For there are strengths as well as weaknesses in Heyman’s interpretation of Aristotle, just as there are in that of Weinrib. It is, indeed, fruitful to consider the issue of whether these two approaches might not be in some way combined, and, if so, how this might be done. As I have presented it so
far, the debate between Weinrib and Heyman involves a straightforward ‘either-or’ choice between on the one hand thinking, as Weinrib does, of individual moral agents in a purely philosophical or ahistorical manner, as abstract moral persons, in a manner which (rightly or wrongly) Weinrib associates with the philosophies of both Kant and Hegel, and on the other hand thinking of them, as Heyman does, as historically situated selves who possess a determinate social identity as the citizens of a particular \textit{polis}. What neither Weinrib nor Heyman consider is the possibility that, for Aristotle, an individual moral agent might actually be \textit{both} of these at the same time. For there is no logical inconsistency in attributing to Aristotle the view that an individual moral agent who is a citizen of a particular \textit{polis} and who possesses a particular social identity is \textit{also} a human being and therefore a moral ‘person.’ Indeed, it seems clear that the same individual might be considered from either one or the other of these two different (but not incompatible) points of view depending on the circumstances.

We may illustrate this way of thinking about Aristotle’s views on moral agency by considering again the passage from the \textit{Nicomachean Ethics} referred to earlier, which runs as follows:

\begin{quote}
For where there is nothing common to ruler and ruled, there is not friendship either, since there is not justice; e.g. between craftsman and tool, soul and body, master and slave; the latter in each case is benefited by that which uses it, but there is no friendship nor justice towards lifeless things. But neither is there friendship towards a horse or an ox, nor to a slave qua slave. For there is nothing common to the two parties; the slave is a living tool and the tool a lifeless slave. Qua slave then, one cannot be friends with him. But qua human being one can; for there seems to be some justice between any human being and any other who can share in a system of law or be a party to an agreement; therefore there can also be friendship with him in so far as he is a man. \textsuperscript{37}
\end{quote}

\textsuperscript{37}Aristotle, Ethics, VIII, 11, 1161a31-1161b7, 1835.
Although Aristotle does not say so explicitly, in my view there is good reason to think that in this passage he is referring to conventional rather than natural slavery. One of the striking things about this passage is the fact that within it Aristotle indicates quite clearly that he thinks of both the masters and slaves to whom he is referring as human beings as well as masters and slaves. This passage suggests that for Aristotle being either a master or a slave, or possessing a particular recognized identity of this kind, is (sometimes at least) a matter of social and legal convention only. It is not, therefore, something which might be said to be sanctioned by any principle of natural justice or law. In other words, here at least, Aristotle appears to be assuming that by nature all human beings are equal in respect of their possession of those very features which make them human. Consequently it is by law only, that is to say positive law or what Aristotle refers to as conventional justice, that they become unequals, the one a master and the other a slave. These remarks in the *Ethics* seem to me to be quite astonishing. For in the first place because they flatly contradict what Aristotle says elsewhere about slavery, especially in its defence of natural slavery in Book One of the *Politics*. And in the second place they appear to prefigure in a striking way the later Stoic view that there are certain ethical or juridical principles, that is to say the principles of natural law, which ought to regulate the conduct of individuals in relation to one another, simply on the grounds that these individuals are equals as human beings. It is these ideas which provide the link which connects Aristotle’s legal philosophy to that of Kant and Hegel. Again, therefore, there is at least something to be said for Weinrib’s account of Aristotle’s views regarding the character of the legal subject.

**Conclusion**

Although there is something to be said for each of them, then, nevertheless both Weinrib’s interpretation of Aristotle and that of Heyman are limited because they are partial and one-sided.
Each of them picks up on an aspect of Aristotle’s thought which is important and which is ignored by the other. But in consequence of this each of them also has significant weaknesses. The strength of Weinrib’s reading is that it recognizes that, if only implicitly, Aristotle does possess the notion of abstract moral personality. It fails, however, to acknowledge the importance of the fact that Aristotle’s citizens also possess a determinate social identity. They are not just moral persons in the abstract, but also the citizens of a particular historically given legal community or *polis* who, as such, possess a determinate social identity, with associated rights and duties sanctioned by the positive law of the society in which they live. The strength of Heyman’s reading is that, unlike Weinrib, he appreciates that for Aristotle a self, and therefore a moral person, is never unencumbered. It is always a socially situated self or moral person. However, Heyman does not consider the possibility that, even so, for Aristotle there is much more to being a moral person than just being the citizen of a particular *polis*.

The suggestion here therefore is that, as in the case of the principles of political justice discussed in Book V, Chapter 7 of the *Nicomachean Ethics*, for Aristotle so also an individual citizen might be thought of as a complex entity composed of parts, one of which is ‘natural’ and the other of which is ‘conventional’.\(^3^8\) The former is that part of an individual citizen associated with those features possession of which makes him (*sic*) a moral agent or a legal subject in general. These are the features which all citizens possesses simply because and in so far as they

are abstract moral persons or human beings. They are the features which all human beings possess in common, and the possession or non-possession of which (amongst other things) is taken into account when he is deemed either to be or not to be worthy of being a citizen of a particular polis. The latter is that part of an individual citizen which makes him (sic) a citizen or a member of a particular society at a particular time, with a determinate social identity associated with substantive moral and legal rights and duties as these have been defined or determined by the conventions associated with the system of political justice of that polis. Each of these components is necessary, and neither on its own is sufficient, for an adequate understanding of Aristotle’s views on legal subjectivity and the basis of citizenship. It is precisely because both Weinrib and Heyman, albeit in different ways, focus on just one of these aspects of Aristotle’s thought whilst at the same time ignoring the other, that they are unable to offer an adequate account of Aristotle’s views on the nature of the legal subject considered as a whole, or in the terminology of Hegelian metaphysics an ‘actual’ or ‘concrete’ individual.39

7,785 words

39For this see Tony Burns, Hegel and Natural Law Theory, in Natural Law and Political Ideology in the Philosophy of Hegel, 42-74 (1996); Hegel and Natural Law Theory, 15 Politics, 1, 27 (1995); and Metaphysics and Politics in Aristotle and Hegel.