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THE ARISTOTELIAN CONCEPTION OF NATURAL LAW AND ITS RECEPTION IN EARLY PROTESTANT COMMENTARIES ON THE *NICOMACHEAN ETHICS*

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ABSTRACT. The Protestant reception both of Aristotle and of the concept of natural law have been the object of renewed attention. The present article aims at a cross-fertilization of these two recoveries: did a specifically Aristotelian approach to natural law (among other important sources) play a significant role in classical Protestant thought? The article answers this question by means of a review of the Protestant commentaries on Aristotle's natural law-passage in *Nicomachean Ethics* V, 7. Reformation and post-Reformation scholars sometimes offered original readings of this text, but above all they cultivated the various approaches to the passage that had been developed during the medieval period.

KEY WORDS: Aristotle, *Nicomachean Ethics*, Natural Law, Melanchthon, Velsius

Introduction

Reviewing some recent Protestant works on natural law, Jordan Ballor has written that the 'hegemonic rejection of natural law among Protestants has been definitively overcome' (Ballor 2012: 195). If concern for the history of Protestant reflection of natural law was a rarity three decades ago, in the wake of recent works by Stephen Grabill, David VanDrunen and others it has indeed become a standard topic for Protestant ethicists (Grabill 2006; VanDrunen 2010). A similar change has taken place with regard to early Protestant Aristotelianism. It was neglected as an intellectual tradition from the Enlightenment until the last decades of the twentieth century, but then the simultaneous efforts of scholars working on the Renaissance and on Protestant scholasticism put it back in the map (among others see Dreitzel 1988; Freedman 1985; Muller 2001; Schmitt 1983).

This simultaneous Protestant retrieval of natural law and of the Aristotelian tradition is highly significant for the way we describe the Reformation's relation to the previous Christian intellectual tradition. Brad Gregory's

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polemical book on the Reformation, for instance, can well be summarized in his statement that it 'ended more than a thousand years of Christianity as a framework for shared intellectual life in the Latin West', (Gregory 2012: 45) and both the rejection of natural law and of Aristotle are central ingredients of this critique (Gregory 2012: 206-7). But after both these developments have been exposed as myths, the overall credibility of such an interpretation of the Reformation begins to go up in smoke.

But there are further questions to be raised about the Protestant reception of natural law and of Aristotle. One thing we seldom consider when addressing these things is how odd the combination 'Aristotelian natural law' in one sense is. If any Ancient philosopher developed a moral philosophy in which the idea of law plays a very minor role, it was Aristotle. Understanding the human good that consists in *eudaimonia*, and the virtues necessary for its attainment, is the core of Aristotelian moral philosophy. In contrast to nearly any other Ancient system of moral philosophy, Aristotle had no need for notions such as the imitation of nature. The Stoics, in contrast, developed a notion of natural law that was enthusiastically received among earlier medieval Christians (Colish 1990), and which continued to be endorsed once the general framework for moral philosophy became predominantly Aristotelian. Cicero must also be counted as a significant non-Aristotelian source of medieval natural law thinking (Corso 2008), not to mention Romans 2. This is, however, only one side of the story with regard to Aristotle. When dealing with the virtue of justice in book V of the *Nicomachean Ethics*, he divides 'political justice' into things just by convention and things naturally just (*NE* V 7, 1134b18-1135a5). While this passage was less decisive than the Stoic views for the early history of natural law, it later become a standard *locus* on this issue [for a study of the medieval commentaries on this chapter see García-Huidobro 2017]. The main concern of the present article is simply to explore the way in which early Protestants dealt with this Aristotelian treatment of those things that are naturally just. Early Protestants obviously wrote on the *lex naturae* or *ius naturalis* in a variety of literary genres: in systematic theological writings, in works specifically dedicated to natural law, in polemical political treatises, and elsewhere. But Aristotle's *Ethics* continued to form the backbone of moral philosophy in Protestant territories throughout the sixteenth and seventeenth centuries, and almost fifty of these commentaries are still preserved. Elsewhere, I already offered a more general overview of these commentaries (Svensson 2019), and I will thus refrain from introducing their largely unknown authors here. But even though I will not discuss the confessional allegiance of each commentator, I should stress that I have found no difference in the way in which Lutheran and Reformed authors approach Aristotle and the natural law.

This article is, then, concerned exclusively with the way in which these commentaries address this still unexplored source for early Protestant discussion of natural law. Over the centuries of Christian reception of Aristotle, two parallel efforts can be singled out. On the one hand, the difficulties specific to *Nicomachean Ethics* V, 7 were treated by the long chain of medieval commentators, arriving at a number of explanations of the problems implicit and explicit in the text. On the other hand, Aristotle's insights were incorporated into the wider discussion on natural law, which drew on various Christian and Pagan sources. Sometimes a commentary on Aristotle points us to such systematic treatments of the topic. Thus, in his commentary Hubert van Giffen tells the reader that 'on the law of nature one should consult Hemmingsen, and Melanchthon in his *Epitome philosophiae moralis*, no part of that tract being as remarkable' (van Giffen 1608: 405). Van Giffen (who would later convert to Roman Catholicism) thus places his commentary firmly within a Protestant tradition of reflection on natural law [for the place of Hemmingsen in this tradition see the introduction by Eric Hutchinson and Korey Maas in Hemmingsen 2018]. Cross-referencing to Hemmingsen's and Melanchthon's systematic treatises, moreover, frees van Giffen for the precise explication of Aristotle's passage on natural law.

The first place to look for natural law in the commentaries on the *Nicomachean Ethics* is not, however, that chapter, but the prologues. There is nothing obvious about this fact. Prologues have always been an important feature of commentaries, but their possible content varies significantly across time. Aquinas' prologues to his Aristotelian commentaries, for instance, typically offer a succinct overview of the nature and method of the discipline covered. It is, in contrast, a distinctive feature of Protestant commentaries on Aristotle, and especially on the *Ethics*, to use these prologues as the adequate place for discussing the relation between Christianity and moral philosophy [this distinctive feature has been highlighted by Dreitzel 2009: 333]. Since the law-gospel distinction was the standard tool for explaining this relation, law—also natural law—became a subject of discussion already in the prologues (see, for instance, Strigelius 1572: 13-22; Walaeus 1625: 9). It is not on these prologues, however, that this article will focus, but on three specific questions that can be found in the commentaries on book V, chapter 7. First, we will address the way in which the relation between natural law (*lex naturalis/lex naturae/ius naturalis*) and *ius gentium* is discussed (which also involves a discussion about the relationship between jurists and philosophers); second, we will look at the relation between natural and positive law; finally, the reception of Aristotle's apparently strange notion of a mutable natural law will be discussed.

The question for contemporary research is not whether Protestant Aristotelianism was a significant phenomenon, nor whether Protestants adhered to

natural law; it is rather the kind of Aristotelianism and the kind of natural law theories that were expounded. In the words of Ballor, 'the question of natural law and Protestantism is increasingly becoming not that of ‹If›, but that of ‹How›' (Ballor 2012: 208). The present article is conceived as a contribution to that second question. And as we will see, this 'How' is not strikingly innovative. In terms of substance, we will see that these commentaries treat natural law in a way that is attentive to concrete human law. In terms of intellectual tradition, the predominant pattern is that of a continuation of the medieval debates. This occurs mostly without explicit reference to medieval debates, but the readings of medieval authors as different as Michael of Ephesus and Thomas Aquinas can easily be discerned.

Ius naturale and *ius gentium*

While some commentaries are of catechetical or pedagogical nature, they are also the kind of text where technical discussions can take place and where the relation between different disciplinary approaches can be discussed. Indeed, throughout the medieval tradition of commentaries, it was common to compare Aristotle's and the Roman jurists' conception of justice in this place. The distinction between a natural law and a law of nations (*ius gentium*)—the customary law thought to be held in common by all peoples—is not forced upon the commentators by Aristotle's text. Aristotle rather presents natural justice as one of the subdivisions of political justice. Christian commentaries on this text then commented with questions coming from the Roman legal tradition in mind. Like the medieval commentaries, the Protestant ones could either try to harmonize these views with Aristotle, or they could prefer the Stagirite over the jurists. Indeed, among the medievals all but Oresme strove after harmonization (García-Huidobro 2017: 160-167).

Harmonizing was doubtless the predominant approach among the Protestants as well. Thus, one of the earliest commentaries, by Otto Werdmüller, not only presents a harmonizing approach to Aristotle and Ulpianus. He tells us that natural law can be called '*ius gentium*, general or common law, or even divine law', in contrast with the 'civil, positive, or human' law issued by public authority (Werdmüller 1545: 96). In the same vein, Joachim Camerarius affirms that all reasonable men (*sanae mentis*) consider natural law and *ius gentium* as equivalent (Camerarius 1578: 276), and Theophilus Golius tells us that 'under *ius naturalis* we can also understand that which the jurists call law of nations, its definition being *nearly* the same as Aristotle's for the former' (Golius 1597: 207-8, my italics). During the sixteenth century, this issue was eagerly debated among Aquinas' commentators in the Iberian Peninsula as well, with authors like Domingo de Soto describing the *ius gentium* as positive law (Oliveira e Silva 2014). At least in their commentaries on Aristotle's *Ethics*, the Protestants unanimously conceived the *ius gentium* as an expression of

natural law. For them, the reason for understanding the law of peoples as natural rather than positive lies not only in its content, but also in formal aspects. Thus, Avenarius points out that positive (*civile*) law requires the coming together and the consent of those who will be bound by it; but such a reunion has never taken place for humanity as a whole (Avenarius 1622: Disp. VIII, 10). Hence, the laws that peoples hold in common are also closer to natural law with regard to their form.

It should be pointed out, however, that some of these authors take the identification between natural law and *ius gentium* more strictly than others. Golius, after all, describes their definitions as only 'nearly identical' (*prope eadem*). The Romans described natural law as the law common to all animals (*Dig*. 1.1.1.3), and this is not easy to harmonize with approaches that stress the rational character of natural law. Not all commentators address this problem in the same terms. Friedrich Cahlen's approach avoids pitting philosophers against jurists. He stresses that not all reputable jurists adhere to the Roman description of natural law, in support of which he quotes Henricus Hahnius and Hugo Grotius (Cahlen 1662: 247). Stressing that the jurists know that natural law is a matter of reason is indeed the only point he makes in his short commentary on this chapter. The more frequent approach, however, was to describe Aristotle's language as more precise than the formula of the Roman jurists. As Jacobus Bruno writes, they use too wide an understanding of natural law (*latissime extendunt*) (Bruno 1665: 268).

In the preceding paragraphs we have followed this discussion throughout the century that runs from Werdmüller to Cahlen and Bruno. It is worthwhile to look back to the beginning of these discussions in Melanchthon's commentary and see how this discussion relates to further aspects of the way in which natural law is understood. Throughout the several versions of his commentary, Melanchthon repeatedly defines natural law in terms of a certain *notitia* or practical principle present in us since creation (thus, for instance, in Melanchthon 1531: 11-12). In later versions of his commentary, this is explicitly turned against the Roman jurists. Melanchthon shares the concern we've seen echoed in other commentators, namely that extending natural law to the animal kingdom obliterates the connection between law and reason. But given his concern, Melanchthon actually departed from the approaches that harmonize Aristotle and the jurists: polemically reading Aristotle *against* the jurists, he believed that he must choose between these rational practical principles and the inclinations humans share with other animals. Thus, he concludes that 'it is more appropriate to understand law (*lex*) in terms of the notions impressed by God than in terms of our affections (as do those who vaguely affirm that natural law (*ius naturae*) consists in the inclinations that we share with the beasts). […] Not the affections, but the notions constitute rules' (Melanchthon 1834: 385). Rejecting the position of the

Roman jurists, as we can see, leads him to exclude human inclinations from the basic structure of natural law.

But before we read this as evidence for a 'rationalist' natural law among the Protestants, we should note how unique Melanchthon's position actually is. The independence of the later tradition from Melanchthon can easily be illustrated with Wolfgang Heider's commentary. This is a commentary that shows as much appreciation for Melanchthon as his closest students did, though it is written a century later. When introducing his discussion of positive law, Heider even lists Melanchthon's definition alongside Aristotle's, Demosthenes' and Cicero's, the four definitions he considers most useful (Heider 1629: 864). But Heider sees no reason for a sharp contrast between Aristotle and the jurists, and thus he departs from the position we've just seen Melanchthon affirming. 'Jurists and philosophers differ slightly on the law of nature', he writes, stressing that their dispute is rather terminological (Heider 1629: 890). He sides with the philosophers in these terminological disputes, but he immediately explains that the jurists had a good point: the inclinations we share with other animals, *pace* Melanchthon, are part of our access to natural law. Heider even points out that this issue was well understood by the scholastics (and given his position, he may well have Aquinas' teaching in *S. Th*. I-II, 94, 2 in mind). We strive for conservation of our being, a striving we have in common with other creatures; since we are animals we strive for food, for community, for procreation; we seek truth and a good life. Natural law is arrived at in the conjunction of practical principles and the goods that are ends of these inclinations (Heider 1629: 891). Like many of his forerunners, Heider moreover teaches that natural law will therefore have different levels; a primary level of natural law directly connected to first practical principles, and a secondary natural law consisting in principles derives from the primary ones and 'received among all peoples' (Heider 1629: 892). A prudent legislator will, then, be attentive to the laws of different peoples.

This raises important questions about the degree to which pagan models have to be considered by Christians and the degree to which we should consider that some legal systems—above all Roman law and the Mosaic law—have a quasi-paradigmatic value. Let us consider the way in which one commentator, Andrew Aidy, approaches this problem. Aidy's work, published in 1614, offers a textual commentary of the passage (which in the chapter division he follows is V, 10), a list of derived axioms, and, subsequently, a list of *quaestiones*. One of these is whether Christians may use the law of pagan nations. The law of these nations, he writes summarizing the possible objections, 'contains impieties, sometimes clashes with natural law, and even has internal contradictions' (Aidy 1614: 697). But Aidy himself is inclined to affirming the legitimacy of Christian appeal to these laws, and he offers five reasons for accepting laws of pagan origin. First, for the simple reason that obedience is

a good thing, and we already have those laws. Second, because the Gospel does not subvert the nations it reaches (*non tollit politias*). Paul himself, the third argument reminds us, commends obedience to Pagan rulers. Fourth, because for a great part of its history, the Christian Church has actually been established among foreign nations. Finally, because Christian rulers have themselves accepted them for their utility and equity, and thus it is now a matter of obedience to Christian rulers to accept them (Aidy 1614: 696-700). Similar questions were raised by many contemporaries regarding the Mosaic law [for a significant systematic treatment see Junius 2015]. The problem with the Mosaic law was obviously not its origin, but the fact that it simultaneously had to be considered as non-binding and as a plausibly superior model of legal order. It thus required a different treatment than Roman law, but it is not strange that some of these commentaries would discuss the usefulness of Roman and Mosaic law for Christians in a sequence (thus, for instance, Avenarius 1622: Dodec. IX, 3-4). Commentators of Aristotle's *Ethics* as they were, these early Protestants thought about natural law having the concrete human law in mind. The natural law was not discussed in abstract isolation from concrete cases of human law, nor was the value of positive law dismissed. In the next section we will consider this relation between natural and positive law in more detail.

Natural and Positive Law

How do we know that there is a natural law? How does this natural law relate to positive law? What function and dignity do both these laws have? Not all commentaries address these questions with the same interest, but together they give us a good overview of the range of positions that early Protestants could take on these issues when commenting on Aristotle.

Let us begin with our access to natural law and Melanchthon's approach to this problem. A first version of his commentary on book V was published in 1531 (it was not included in collections of his works and went unnoticed until it was detected by Nicole Kuropka (Kuropka 2002: 239-242). This early commentary already includes most of the positions that would characterize Melanchthon's revisions in the following decades. In one point, however, there is a minor though interesting divergence. All of Melanchthon's later commentaries would stress that knowledge of natural law depends on certain practical *notitiae* that we have by nature. As we have seen, that position leads him to conceive a fundamental tension between reason and our mostly disordered inclinations. In addition, the earliest version of the commentary mentions that 'in the schools these [*notitiae*] are rather called practical principles' (Melanchthon 1531: 11). He thus connects with a long-standing medieval tradition that posited the need for such principles if practical life is going to be intelligible at all, in a way parallel to the structuring role of theoretical

principles like the one of non-contradiction. Writing on *synderesis* in his *De veritate*, Aquinas had formulated the issue in this way: 'just as there is a natural habit of the human soul through which it knows principles of the speculative sciences, which we call understanding of principles, so, too, there is in the soul a natural habit of first principles of action, which are the universal principles of the natural law' (Aquinas 1994: 304). Melanchthon's later choice of *notitiae* instead of *principia* makes the connection with the Stoic background more visible than the medieval one. But it is a medieval argument that Melanchthon would continue to use throughout the many editions of his commentary. Melanchthon's is thus an approach that cannot be found in Aristotle himself, but which is rooted in the Aristotelian tradition (some Protestant commentators who would follow him in this regard are Avenarius, Strigelius, and Werdmüller (Avenarius 1622: disp. 3; Strigelius 1572: 429; Werdmüller 1545: 24). But since Aristotle himself had no explicit position on our access to practical principles, it is not surprising that his commentators would mention various different possibilities. Schegk, for instance, writes of a *quodam tacitu instinctu* by which we know of natural law; after giving some illustration of its content—summarized in the golden rule—he repeats that we accept such teaching by a kind of natural faith (*naturali fide*) (Schegk 1550: 485).

Schegk can also help us to introduce the way in which the relation between natural and positive law was broadly conceived. 'The truth of civil laws, he writes, must coincide with natural laws, or otherwise they should not be called laws' (Schegk 1550: 485). Now, this need for both laws to coincide can be met in different ways. Hyperius, for instance, writes about positive law 'flowing' from natural law (*fluit… ex naturali*) (Hyperius 1586: 249), while Melanchthon stresses that positive law is a determination that considers general conclusions of natural law in light of specific variable circumstances (Melanchthon 1834: 393). Besides asserting the need for this coincidence, the commentators often give us lists of features of natural and positive law. As van Giffen writes, natural law is distinguished by two traits, the first having to do with its scope (for natural law has, indeed, universal validity), while the second relates to the independent character of its 'force'. Indeed, natural law mandates independently from any human promulgation. As van Giffen puts it, it mandates by itself (*per se valeat*) (van Giffen 1608: 399). Theophilus Golius names three such distinguishing features: natural law has its efficient cause in God, it has the same force everywhere (it is immutable, it cannot be repealed), and it has good character (*honestas*) as its final cause (Golius 1597: 208) [For a similar threefold characterization see Donaldson 1621: 216-217].

In light of these distinctive features, it is not surprising to find Aidy telling us that he will first discuss the *jus naturale*, since 'it carries more dignity than the legal one, both with regard to its origin and with regard to its nature' (Aidy 1614: 683). But even though this general statement could probably

have been endorsed by anyone writing a commentary on the *Ethics*, there is place for very different accents regarding the dignity of both kinds of justice. We will close this section looking at the contrasting approaches of Melanchthon and Justus Velsius. While Melanchthon offers a lengthy discussion of natural law (Melanchthon 1834: 383-393), that discussion actually precedes his treatment of the Aristotelian passage on natural law (V, 7 1134b18-1135a5). Once he arrives at this part of Aristotle's text, it is positive law he turns to. In the earlier editions of his commentary, from 1532 to 1545, the title he gives to the section that deals with this passage is actually 'What is positive law?' (*Ius positivum quid sit?*). He states that once a positive law has been established, it carries more strength because of its origin in a legitimate authority than for the reasons originally given on its behalf. Melanchthon further emphasizes that the possible vices of such laws should be disguised, and he sees this as a particular duty for Christians. Even the Scriptures, he writes (without supporting references), present positive laws as divine (*ipsas leges vocat ordinationes divinas*) (Melanchthon 1834: 393). Thus, at least in the early editions of his commentary, it is the necessity and force of this positive law, grounded on natural law, that he sees as the center of Aristotle's passage. However, no latent legal positivism lies behind this high view of positive law. It is, indeed, easy to explain it in terms of Melanchthon's concern for the goods that depend on a fragile public order. That is not an unusual nor an ungrounded concern. But Melanchthon's emphatic approach—which in the editions between 1545 and 1560 is replaced by a briefer and more level-headed explanation (Melanchthon 1834: 393)—is unique among Protestant commentaries on the *Ethics*.

A brief look at Justus Velsius will give us some insight into the other extreme. Velsius spent most of his life as an itinerant teacher, in contact with both Protestant and Catholic writers. He regretted the division of Christendom, but he was more inclined to spiritualist than to Protestant or Catholic convictions (de Waardt 2014). Both in terms of style and intellectual tradition, his commentary is strikingly independent from the ones we have hitherto discussed. And Velsius' is the only commentary on the *Ethics* in this period that uses this text to raise doubts concerning the justice that can be found in written law. 'Our author', he writes rehearsing Aristotle's argument, 'wants this to count as justice: to preserve these things, the customs of our country, its institutions and written law' (Velsius 1551: F 5). Velsius suggests that Aristotle's text is being too naïve regarding the corruption of customs, and he points to Chrysostom's homily against New Year festivities as an example of a more adequate Christian diagnose of utterly corrupt communities [the reference is to the Homily *In Kalendas*, PG 48: 951-956]. As usual among commentators, Velsius tries to rescue Aristotle: the Stagirite must have been aware of this problem, but he should have spoken more accurately about the

sense in which written law is without qualification (*absolute*) to be preserved. Here we have, then, not a rejection of Aristotle, but a very explicit defense of natural law as corrective of custom or law. Among the Greeks such an opposition between *physis* and *nomos* would of course have been more typical of the Sophists. Aristotle, in contrast, hardly poses a tension between conventional and natural justice. Velsius does not use these concepts in the strongly oppositional way the Sophists did, but one may well wonder whether his Spiritualist background can help us understand the sharp contrast that he posits between both forms of justice. Among the Protestant commentators one can name Strigelius as an example of explicit rejection of such antithesis, in his case in its Cynic formulation (Strigelius 1572: 431). In any case, when one considers the whole tradition of commentary, instead of the (moderate) extremes that we have found in Melanchthon (until 1545) and Velsius, it is clear that the dignity of both conventional and natural justice is affirmed throughout.

The Problem of Mutability

Let us finally turn to the problem of the mutability of natural law. The Sophists, Aristotle reports, believe that everything is conventional. The argument of those who hold that view is the fact that natural things are not subject to change; they have the same force everywhere, like fire which burns here and in Persia. Our practical world, however, does not behave in this way: unlike the natural world, it is subject to constant change. Hence, the Sophists conclude, nothing is naturally just. But Aristotle's answer does not consist in a defense of an immutable natural law. Instead, he concedes that absence of change can only be found among the gods, but he affirms that there is a natural justice nonetheless (Aristotle *NE* V 7, 1134b18-1135a5). Here we arrive at an approach to natural law that is distinctively Aristotelian, but one that could easily escape many Aristotelian thinkers. Indeed, systematic approaches to natural law, even within the commentaries on Aristotle's text, often avoided this issue. Samuel Rachelius, for instance, presents a typical philosophico-theological view of the cosmological order, of the providential governance of all creation and of human beings, and of the place of natural law and natural goodness therein. Given this context, it is not surprising that he reports Aristotle as describing natural law as absolutely immutable (*simpliciter immutabile esse ait lib. 5*) (Rachelius 1660: 6). This is not a very accurate report of Aristotle's passage, but such a denial of mutability in natural law comes from his systematic approach, in which he is not too interested in discussing the details of Aristotle's text. Other commentators could arrive at similar conclusions given the way they addressed the text of *NE* V, 7. As we have seen, one of the standard questions the commentaries addressed was the relation between natural law and *ius gentium*. As we have further seen, some

commentaries would describe both of these laws as divine. Mutability would hardly fit in such a scheme. And yet some of these commentators had not only theological reasons for being thus inclined; their ancient sources led them in the same direction. Camerarius, for instance, recalls Antigone when commenting on *NE* V, 7. It is *divine* law that forces her to bury her brother, the prohibition of the tyrant notwithstanding (Camerarius 1578: 232). Camerarius is fully aware that this is not the kind of language that Aristotle would use (he describes him as departing from Socrates in this regard), but he seems to take this as a mere difference in language, since he thinks that Aristotle cannot hold that natural law is subject to change. In fact, he reads Aristotle's reference to a mutable natural law as if Aristotle were reporting on those whose reason darkens because of moral failure. 'It is as if Aristotle were trying to say that neither the *ius gentium* nor natural law are mutable, but that they appear to be so to those who do not follow them' (Camerarius 1578: 232). Jakob Thomasius likewise writes that natural law is immutable except in those whose judgment has been obscured by vice (*apud quos vitium ratio recta contraxit*) (Thomasius 1658: 22). In the Middle Ages only one commentary, the one by Michael of Ephesus, interprets Aristotle's text in this way (García-Huidobro 2012). Whether Camerarius or Thomasius were aware of this we do not know. The slightly later commentary by Gebhard Meier, however, refers to Michael's commentary as an eminent explanation of these lines (Meier 1670: 231).

The prevailing approach, however, sided with Aristotle's actual position, which unequivocally states that immutability is only to be found 'among the gods'. There is a natural law among men, but it is a sublunary, and as such mutable, phenomenon (*EN* V 7, 1134b 28-30). However, once Aristotle's position is acknowledged, there is still room for different explanations of his thesis. Some Protestant commentators read Aristotle's mutable natural justice as a reference to dispensation. That usury or polygamy are sometimes accepted is presented by Hyperius as a minor departure (*modica deflectio*) in natural law. And being such a minor change (*mutatio exigua*), that dispensation or toleration (*permissio*) is acceptable. One is tempted to reply that if a dispensation is needed, we are facing an evil, not a variation of natural justice. But Hyperius writes that such minor variations cannot be described as *contra naturam* (Hyperius 1586: 251). Strigelius is a good example of a commentator who is inclined to the same reading, while simultaneously being explicit about its limits. In his commentary, he describes natural law as consisting of some fixed elements (like the prohibition of hurting the innocent) and other mutable aspects. These mutable aspects are not indifferent, but rather tolerable divergences from what is naturally just (strikingly, the only example mentioned by Strigelius is divorce) (Strigelius 1572: 426).

While there is nothing new in the notion that some evils have to be permitted, it is strange to resort to the idea of natural law's mutability to advance that position: if natural law is rational, such dispensations seem to entail that it will sometimes be rational to depart a bit from rationality. In any case, other commentaries followed a more traditional approach to this text. The idea, first formulated in Plato's *Republic*, that justice cannot include returning his sword to a madman (*Rep*. 331c), is mentioned by Scribonius as illustrating one kind of change: that sometimes an inferior law must give way to a superior law (Scribonius 1589: 31). Likewise, Johannes Magirus, whose commentary was posthumously published in 1601, writes that natural law is immutable in itself (*per se*), and mutable with regard to us (*ratione hominum*); but this mutability not only implies that we must attend to morally relevant circumstances (as when we abstain from returning the sword to the madman) but also to politically relevant circumstances like the kind of political order that we inhabit (Magirus 1842: 266-267). This is the kind of explanation that in earlier centuries was advanced by Aquinas and Albert the Great (García-Huidobro 2017: 47-104). Wolfgang Heider, on the other hand, is a typical representative of the explanation according to which there is no mutability *de iure,* but only *de facto* (Heider 1629: 893). Not all of the Protestant interpretations, however, have medieval precedents. Carl Bang, a Dane who published his commentary in Wittenberg in 1599, has an original way of reading Aristotle's assertion that immutability can only be found among the gods. Without quoting Aristotle's actual words, Bang presents the text as if it taught that duties towards God are immutable and duties toward men are mutable (*quae in jure naturali homines concernunt, interdum mutantur, quae vero Deum, simpliciter immutabilia sunt*; Bang 1599: not paginated). Regrettably, he does not develop this idea further.

Conclusions

As we have seen, the existence of a natural law is taken for granted by all of these commentators, as is the pertinence of teaching ethics with Aristotle. Indeed, though they are all aware that there have been critics of the idea of natural law, none of them addresses contemporary critics. A medieval predecessor like Averroes had used this section to criticize his voluntaristic contemporaries, the Asharites (García-Huidobro 2017: 40). Among the Protestant commentators, in contrast, both legal positivism and relativism seem to be treated as problems of the past.

Protestant commentators on the *Nicomachean Ethics*, as we have seen, work within the broad previous tradition of commentary, mostly taking sides within controversies that had been developing for centuries, and rarely proposing glaringly new readings. They also had a good grasp of the difference in kind between these disagreements: they know that some of these disagreements

are merely verbal, while others are more substantive. And however significant one may consider some of these differences to be, none of them are the result of the voluntaristic or nominalistic tendencies that nowadays critics assume to have prevailed in this period. They are rather the kind of differences one can find within a single tradition concerned with the explanation of a difficult text.

Finally, it is worth noting how our examination of these interpretations of NE V, 7 gives us a new insight into Melanchthon's position within this tradition. Throughout these commentaries, he is the most repeatedly quoted contemporary, and the prefaces to the commentaries routinely single out his decisive role. Nevertheless, his specific interpretations and positions are often (though silently) abandoned. No other commentator reads Aristotle as strongly against the human jurists as Melanchthon, nor does any other commentator assert the validity of positive law in such categorical terms. The independence of the later tradition is substantive even when later commentators understood themselves as broadly Melanchthonian (like Heider). His unique position as the great inspirer of Protestant Aristotelianism and Protestant natural law did rarely determine the ways in which Aristotle would be read nor the ways in which natural law would be understood.

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