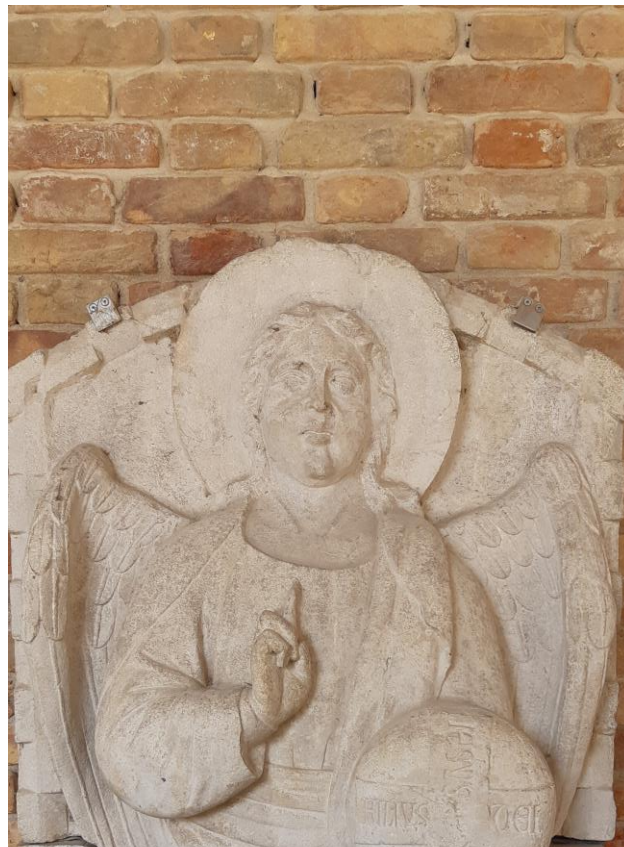




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## THE INDIVIDUAL, POWERS AND THE IDEA OF PUNISHMENT IN ARISTOTLE

di Virginia M. Giouli

**Abstract:** Aristotle cherishes the idea of social equity despite his deep respect for social diversity and social difference. The end justifies the means as long as we aim to achieve equity and virtue, according to Aristotle. Equity thus determines and rectifies penal justice. Devotion to the ideal of penal justice annuls any relativism in our public experiences of the institutional sanctions that safeguard democracy. However, Aristotle considers a valid system of penal justice as unattainable, believing, as he does, that one cannot ever know whether punishment is socially efficacious. If we think logically, we may see that Aristotle believes that power is inherently weak. Unfortunately, however wide the field of doubts facing us, Aristotle's material reductionism is traced simply because it is the content of our experience, a reductionist one. Nevertheless, his dismissal of the motives of revenge and utility as nonsensical re-establishes the institutional character of punishment in order to humanise it. Punishment is no longer considered to be a symbol of state-oppression and becomes a symbol of law the fulfillment of which is wisdom without desire for uncontrolled power

**Keywords:** Equity, penal justice, punishment, Aristotele.

**Title:** *L'individuo, le forme di potere e l'idea di punizione in Aristotele*

### Riassunto

Aristotele ha a cuore l'idea dell'equità sociale nonostante il suo profondo rispetto per la diversità sociale e delle differenze. Secondo Aristotele, il fine giustifica i mezzi fintanto che si mira all'equità e alla virtù. L'equità determina e giustifica così la giustizia penale. La devozione all'ideale della giustizia penale annulla qualsiasi relativismo nelle nostre esperienze pubbliche delle sanzioni istituzionali che salvaguardano la democrazia. Tuttavia, Aristotele considera un valido sistema di giustizia penale irraggiungibile, ritenendo, come lui, che non si può mai sapere se la punizione sia socialmente efficace. Se pensiamo in modo logico, possiamo vedere che Aristotele ritiene che il potere sia intrinsecamente

debole. Purtroppo, per quanto ampio sia il campo dei dubbi che abbiamo di fronte, il riduzionismo materiale di Aristotele è tracciato semplicemente perché è il contenuto della nostra esperienza, un riduzionismo. Ciononostante, la sua esclusione dei motivi di vendetta e di utilità come nonsense ristabilisce il carattere istituzionale della punizione per umanizzarla. La punizione non è più considerata un simbolo dell'oppressione dello Stato e diventa un simbolo della legge il cui compimento è la saggezza senza desiderio di potere incontrollato.

**Parole chiave:** Equità, Giustizia penale, Punizione, Aristotele.

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1. Aristotle, Castoriadis says,<sup>1</sup> wrote *The Constitution of the Athenians*, not the Constitution of Athens. Aristotle here uses Thucydides' "ἄνδρες γὰρ πόλις" (for the city is the men). This alludes to the way people go about common affairs under a given political constitution. According to Aristotle, Castoriadis rightly claims,<sup>2</sup> only the political institutions of society holding explicit power can formulate penal sanctions. If all such sanctions wither away in society, we may infer from Popper,<sup>3</sup> if each member of a community is not required to exercise personal responsibility for the realisation of the a functional society controlled by penal sanctions, there begins the suppression of reason and truth in history and a return to the state of mere beasts. Nature does not know norms. The introduction of norms, of institutional sanctions against the violators of legislation, are thus what has raised men above beasts. True, we would have expected Aristotle to have preferred a biological model of social and political development. Aristotle, indeed, invokes at the same time nature and reason in order to justify penal sanctions as prerequisites for democracy. But the term *nature*, in *Metaphysics* 1015 a14, lacks the modern scientific sense and suggests the essence, the purpose of social and political institutions in their order.<sup>4</sup> We may again infer from Castoriadis<sup>5</sup> that any mention of natural law would be self-contradictory in Aristotle's Works. No human being can be considered worthy unless s/he is a

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<sup>1</sup> Cf. Castoriadis, *Philosophy*, 109; cf. Also Virginia M. Giouli, *Psychoanalysis*, 83-106.

<sup>2</sup> Cf. Castoriadis, *Philosophy*, 156.

<sup>3</sup> Cf. K. Popper, *The Open Society and its Enemies I*, 200-201.

<sup>4</sup> Cf. Castoriadis, *Philosophy*, 130.

<sup>5</sup> Cf. Castoriadis, *Philosophy*, 161.

member of a worthy city, i.e., a city ruled by the proper laws. The discovery of the arbitrariness of the institutional penal sanctions<sup>6</sup> by means of which the ruled may control the power of the rulers opens up the interminable discussion about right, wrong, justice and the correct type of Constitution. If we allow<sup>7</sup> for such requirements of law to be permanently open to criticism and to continue producing evidence for their truth or fallibility, we have already seen, this is not even logically tenable. Moreover, they are not morally tenable. Again, we do not propose any unifying goal of morality to determine such conclusive remarks. But this does not imply any relativism<sup>8</sup> in our viewpoint of legal procedures. We only stress the ways in which morality is not so closely linked to rationality, i.e. the ways in which morality is intrinsically consistent in avoiding moral justifications of legal practices in one's conception of the good life, and the absence of this justification in another conception of it.<sup>9</sup> This has nothing to do with the eagerness to eliminate errors and immoral attitudes in social and legal life and reality in general.

We must admit that we are never fully capable of laying claim to social or penal truth, i.e. to what lies beyond the fringes of everyday experience. Aristotle's formula of the material world, its substance, its entelechy, does not guarantee its very identity. What is at stake regards the foundational, the necessary terms of life and social reality; and not the logically impossible, the unknown nature of social truth. What is left therefore for the human: to examine her/his identity and the total of her/his social relations? The answers on offer in Aristotle's texts concern primarily this struggle for responses in the realm of experience, in the world of material objects, in the world of the contingent. The distance between the two realms is indeed vast. We refer to the realm of everyday experiencing of legal practices as being distant from the realm of possibilities. These possibilities can be opened up by our adoption of a system of reference, passionate interpretation and our dedication to the unknown, the logically impossible.

2. Aristotle in *Nicomachean Ethics*, (1095 a ff) is very reluctant<sup>10</sup> to admit that ethics could be a science.<sup>11</sup> But this does not mean that he espouses relativism. Commitment to ethical objectivity should not be confused with commitment to ethical or moral authoritarianism. The virtuous man in Aristotle's scheme has to test her/his conduct to see if it is in accordance with the right rule. In *Nicomachean Ethics*, I-II, VI, it is stated that the determination of what constitutes right rule is to be made in the light of an overall, rationally ordered conception of the Good Life.<sup>12</sup> It is the job of what Aristotle calls *the man of practical wisdom* to use her/his rational powers to work out an overall conception of this life. Aristotle thus espouses the ethical basis of rationalism, since rationality and morality are thus essentially linked. He recognises in *Politics*, 1301 b29, that different ideas of this life, different conceptions of how to live might be appropriate for different persons on account of the different political Constitution under which they are living. But he argues in *Rhetoric*, 1368 a, 1373 b4, in *Nicomachean Ethics*, 1162 b21, 1180 b, 1134 b and in *Politics*, 1319 b, that ideally there is some sort

<sup>6</sup> Cf. Giouli, "The Culture of Non-Punishment." Cf. N. Courakis, "Financial Crime Today," 197-219.

<sup>7</sup> Cf. Virginia M. Giouli, *An Aristotelian Critique*, 44-45.

<sup>8</sup> Cf. Harré, "Persons and Powers."

<sup>9</sup> Cf. Virginia M. Giouli, "Language and Morals," esp. 127 and nn. 9-10.

<sup>10</sup> Cf. Charles and Scott, "Aristotle."

<sup>11</sup> Cf. Putnam, *Reason*, 135, 148-149.

<sup>12</sup> Cf. Cottingham, *Rationalism*, 33.

of Constitution suitable for all. Aristotle cherishes the idea of social equity despite his respect for social diversity and social difference. The end justifies the means as long as we accomplish equity and virtue, he maintains in *Nicomachean Ethics*, 1106 b7, 1107 a5. Equity thus determines and rectifies penal justice, we may infer from *Nicomachean Ethics*, 1137 b8-12. Devotion to such an idea of penal justice avoids any relativism as regards the institutional sanctions that safeguard democracy.<sup>13</sup> The supreme social institution of punishment<sup>14</sup> can be envisaged as a prerequisite for democracy. This means that we emphasise the distance between what we can do in legal science and what we must have done. We shall never fully adopt the values of justice and freedom. But, at the same time, we shall never cease our unsuccessful struggle towards the above. Our devotion to the realm of the unknown, the logically impossible, neither contradicts nor is contradicted by our legal statements; nor does it support nor oppose it. This commitment brings the relevance of our experience into our practice which is self-correcting and activates our scientific knowledge of law and society.<sup>15</sup> Our interpretation of law activates viewpoints regarding propositions of legal truth and fallibility. I now recall Socrates' example regarding his obedience to bad law. We hold here a sceptic's reservation. In the absence of an external point of view we can only resort to our moral convictions or substantive claims. But is thus normativism unavoidable?<sup>16</sup> And does it concern Aristotle's weak metaphysics?<sup>17</sup> We question not only Aristotle's attack on reductionism but also his embracing of the idea that sensory data undermine such viewpoints which the legal proposition conveys. The interpretational is thus normative and it can undermine scientific knowledge of social facts. Social utility indeed can be said to be determined by the ideal of justice. But this is totally unsuccessful. Justice in this sense, Aristotle states, (V, 1, 1129 b30-35) is complete virtue in the fullest sense.<sup>18</sup> Justice is, he adds, the active exercise of absolute virtue. And this is absolute, Aristotle states, because its possessor can exercise it in relation to another person and not only to herself/himself. So here we investigate the legal evidence which we have produced and also the legal phenomena which we have established. This presupposes that we have adopted that range of concepts which seeks legal truth as residing in the realm of the unknown, as an ideal waiting to be realised; since we vulnerable humans must always consider alternative explanations logically possible.<sup>19</sup> And as Nussbaum adds at this point, Aristotle does not regard the evident riskiness and instability of such legal values and truth in the world as a reason to rule them out of the best life by fiat, or to conclude, against common intuition that the person who loses them has lost nothing serious. Instead, Aristotle views the concomitant facts about politics and society as giving a reason for competent and serious people to turn their attention to legislation and political planning. The perception of norms is absent here. But our faithfulness in uncovering them remains intact. This does not mean that we can entirely adopt virtue or justice; or that the interpretational belongs entirely in the realm of the logically possible. It only means that we shall never cease our efforts to realise such an ideal of justice. We cannot realise this outside the conditions in which we can meaningfully attempt this realisation. There is always in Aristotle, as there is in Hegel, a time when contradiction is sharper on a different level,<sup>20</sup> in a different way i.e., one that claims a membership of the body of universalia

<sup>13</sup> Cf. Virginia M. Giouli, "Wittgenstein." Moutsopoulos, "Equity."

<sup>14</sup> Cf. Virginia M. Giouli, *An Aristotelian Critique*, 57-73; also her *Punishment*, 28.

<sup>15</sup> Cf. N. Courakis, "Ethnopsychology," 391-414; also Giouli, "Relativity."

<sup>16</sup> Cf. Rodriguez-Blanco, "Jurisprudence Revisited."

<sup>18</sup> Cf. Nussbaum, *Fragility*, 351-352.

<sup>19</sup> Cf. N. Courakis, "Criminal Law," 3-13.

<sup>20</sup> Cf. Virginia M. Giouli, *The Taming*, 72 and nn. 73-74.

(I, 3, 270 b5-20).<sup>21</sup> For Hegel, however, there is an internal momentum, a dynamic of change in the order of historical events. Laws are inherent in this order and they can highlight contradictory situations, which are unstable due to change. Aristotle believes this to be highly unlikely. Laws are here given *ab extra*, and however hard we may strive to initiate change and, thus, understand contradiction, we are only liable to fall into the error of erroneously wandering to another kind of event in social life and reality in general. All these experiences in Aristotle are challenged by the unknown realm of values. But this can only hinder our vulnerable and weak nature from ever grasping the meaning of this realm of the inexplicable. Change –regarding our shift of viewpoint to view the unknown, and the legally unknown especially –happens in a crucial, quasi- Hegelian momentum. Aristotle accounts for such dynamics by showing that amounts do not account for the difference of functions in legal and social administrative practices (I, 1, 1252 a7ff).<sup>22</sup> It is an error to suppose, Aristotle maintains, that the roles of a statesman, of a king, of a household-manager and of a master of slaves are the same, on the ground that they differ not in kind but only in point of numbers of persons –that a master of slaves, for example, has to do with a few people, a household-manager with more, and a statesman or king with more still, as if there were no differences between a large household and a small state. This remark, I believe, does not allow us to maintain together with the eminent scholar Jonathan Barnes, any im-plicit totalitarianism accepted by Aristotle in view of such a theory regarding the state as being compared with a living organism. It is, to borrow from Burke, the notion of order, which underlies the diversity of events. This further implies the balance betwe-en order and novelty; and our acceptance of determinism without dispensing with the exercise of particular freedoms. As Nussbaum states, Aristotle must have been a very balanced character; since his philosophy oscillates between too much order and disorder, ambition and abandonment, excess and deficiency, the super-human and the merely animal. His methodology is an heuristic one; it is similar to a craftsman’s methodology. Nonetheless, I believe that this balance masks his pessimism, as exposed in philosophy and normativity especially. However, we may overestimate the normativistic strain, which is to be uncovered painfully through his Works. We also may embrace empiricism, which points to certain extraneous factors to account for the stages of development and change in human thinking, life and reality in general. We would then miss, to borrow from Burke again, the point of the development from intellectual to social and even physical developments and the functions ascribed to such corresponding modes of thinking. It is this thinking which affords hospitality to the Aristotelian theory of organism. If we neglect this idea, then, all the increasing success of natural science, the different talents and temperaments of individual thinkers, will only point towards aberrations from empiricism and description, such as the bifurcation of nature and the concomitant scepticism. Again, it is the capacity of certain organisms to perform a greater range of functions due to the range of equipment which is ascribed to them. This range makes the difference between our extending our conceptual equipment from the the known to the unknown. We do not mention here the minor difference supplied to us by the bifurcation theories of nature and society; not to mention, also, the idealism that embraces totalitarianism and holds whatever ideal of truth, legal truth especially, within the bounds of human authority. The Truth is annulled.

**3.** We may infer from Aristotle that our use of the interpretational range of concepts regarding the ideal of justice can neither be refuted nor confirmed. Devotion and non-devotion to this ideal are

<sup>21</sup> Cf. Nussbaum, *Fragility*, 257.

<sup>22</sup> Cf. Nussbaum, *Fragility*, 262-263; also Burke, *Questions of Belief*, 34; also his *The Philosophy of Popper*, 147; also his *The Philosophy of Whitehead*, 83-84 and Robert Mayhew, “Aristotle.”

too far apart to contradict each other. This opening up to change is, of course, voluntarily and determines justice as equity, our legal and social world with a greater or lesser ranges of possibilities. We may put an end to the reasons for giving reasons *ad infinitum* (I, 33, 1194 b5-25).<sup>23</sup> There is, Aristotle states, a just claim for a servant against her/his master, and a son/daughter against her/his father. But the just in these cases, he continues, would seem to be homonymous with political justice. The justice about which we are inquiring, he adds, is political justice. For this above all consists in equality, he states. Citizens thus, he continues, are like partners, and tend to be on a par by nature, though they differ in character. But a son against his father or a servant against her/his master would not seem to have any just claim at all, any more than Aristotle's foot or his hand has any just claim against him, and in the same way with each of the members. Citizens are supposed, he explains further, to be in that position. And in the same way neither has a servant any just claim against her/his master for the same reason, he adds. For the servant is a part of her/his master. Or, he explains further, if s/he has any just claim against her/him, it is in the way of an economic claim. But this is not what we are in search of, he concludes, but political justice; for political justice seems to lie in equality and similarity. Here we see the difficulties in ruling with the exercise of this or that particular freedom, since we ourselves lacking complete freedom from ignorance, are unable to rule these difficulties out. The only hint which Aristotle allows here, is that the search for such a realisation of social and political freedom in abstraction from the political conditions under which we can meaningfully perform this exercise, is disastrous. Indeed, even if it were possible to eliminate the bases of conflict, according to Nussbaum, making all citizens say "mine" and "not-mine" as a single body, we should not do this; because, she states, this would mean the destruction of the values proper to the city.

If, aware of the possibility of error, we state that the progress of social science depends just on the fact that all social theory is amenable to tests designed to eliminate the false, then science itself, and social science especially could scarcely survive for very long. And, to be fair to Plato, the same holds for society. Any exemplary legal sentence would then pursue utility and, as Aristotle fears,<sup>24</sup> would serve to oppress people and limit their basic liberties. We do not invoke here any psychologically forward-looking theory; on the contrary it is the social that determines such procedures, as Mill insinuates. Social factors are prerequisites to these procedures, if they are rationally harnessed. We only care to articulate the requirements for the legal procedures, i.e., how we can meaningfully articulate legal statements. Returning to Aristotle and to the grounds which he offers for this confrontation, we need to refer once more to his *Nicomachean Ethics*. Once more, we are faced with the principle of non-reductionism and of the judge's devotion to a certain pattern of values, the interpretational system of reference. Our commitment to the unknown realm of legal values counts more than the ingenious ways of establishing the legal truth or the legal falsity of the statements in question. This does not mean that we should accept any and every claim regarding the meaningful articulation of these statements. It only means that our entire attempt to establish, identify and formulate legal and social facts presupposes that we have already adopted such ranges of interpretational concepts, which are without qualification true. This means that our propositions realise the ideal of justice, the concrete pattern of legal and social values to which we are committed. That is why Aristotle (I, 3, 1094 b25-1095 a5) accepts the sovereignty of judgment over knowledge and over legal knowledge especially. Since, Aristotle states, in every case a man judges rightly what s/he

<sup>23</sup> Cf. Nussbaum, *Fragility*, 353.

<sup>24</sup> Cf. Giouli, *The Philosophy of Punishment*, 29, n. 51. See John Cottingham, "Punishment," 763-764.

understands, and of this only is a good critic, it follows that while in a special field the good critic is a specialist, the good critic in general is a man with a general education. Returning to Dworkin's account of the interpretational being the normative in legal science, these thoughts are prolonged in the following Aristotelian statement, which is of the greatest importance for judges (V, 4, 1132 a20-25). When disputes occur, people have recourse to a judge. To do this, he maintains, is to have recourse to justice, because the object of the judge is to be a sort of personified justice. Also, Aristotle adds, they look for a judge, as an intermediary between them (indeed in some places, e.g. at Larissa or Abydos, the judges are called "mediators"), in the belief that if they obtain what is intermediate, they will secure what is just. The just, then, is an intermediate, inasmuch as the judge is one. We are lacking in value-criteria; this, however, does not entail unreason due to Aristotle's own legal preference for balancing the intellectual and the democratic realization of the ideal of justice. The function of the state is compared to the function of the balance of a living organism.

4. We can again see here that the realm of values is indeed inaccessible for the human. It is only through certain circumstances that we can meaningfully ask for the realisation of justice –if at all. It is our devotion to this realm which makes it possible to meaningfully articulate legal statements concerning truth and justice. Justice is personified. And when we speak of ascribing, gaining or fulfilling justice, not to speak of other values, we must be humble enough to understand our weakness, our incapacity to ever attain them. We can only pursue them and make a claim to them in particular circumstances. We can never adopt a value (V, 6, 1134 b35ff; 1130 a34); This is precisely matched with the Aristotelian pessimism about ever attaining values in social, public and institutional life (I, 5, 1096 a10-17)<sup>25</sup>. Perhaps we had better examine the universal, Aristotle states, and we had better consider critically what is meant by it, although such a course, he admits, is awkward, because friends of ours have introduced the theory of Forms. Yet, Aristotle adds, it would be thought better, or rather necessary above all for philosophers, to refute in defense of the truth even views to which one is attached. And although, he states, both are dear, it is right to give preference to the truth. Now here we can trace our incapacity to reach the realm of the universal good in social life and reality in general. We can never claim to adopt such values fully; there is always more to us and to social life and reality in general. As Nussbaum remarks, our notion of goodness falls short of the unity which is required for the establishment of a single science. The term universal good has application to objects to which certain logical categories can be assigned with different spatio-temporal locations. The presence of each different case corresponds to the object in question. And we have no reason to think that this good points to a single common nature uniting all the disparate objects. The subject-matter in legal life and reality is good according to our controversial notion of goodness which it represents. If Nussbaum's insight applies to the legal good, we can see how misleading it could be to adopt partial idealistic models of truth. This adoption would then lack the vivid element of Aristotle's ideas on change compared to the change which takes place in a living organism. But this rationalism does not give rise to empiricism. It is the product of a misunderstanding in the flux of legal life. We also see the correspondence between natural and social sciences, as adopted by modern sociologists. That we are products of nature (I, 3, 1256 b7-26) does not really inhibit our endeavour to meaningfully attribute the interpretational requirements of law to the corresponding procedures, however unsuccessful these might be, and however irrationally we may organise institutions, laws and society. Aristotle

<sup>25</sup> Cf. Nussbaum, *Fragility*, 292.



states that after the evolution of animals, plants exist for their sake; the other animals exist for the sake of man. Man, Aristotle states, tames them for the use s/he can make of them, as well as for the food they provide; and as for wild animals, most though not all can be used for food or are useful in other ways: clothing and instruments can be made out of them. If then, Aristotle concludes, nature makes nothing without some end in view, nothing to any purpose, it must be that nature has made all of them for the sake of man. This means that it is according to nature that even the art of war –since hunting is a part of it, should in a sense be a way of acquiring property. It must thus be used both against wild beasts and against such men as are by nature intended to be ruled over but refuse. That is the kind of warfare which is by nature just. Our interpretational legal contexts may undermine such viewpoints conveyed through legal propositions regarding especially the scientific knowledge of legal and social facts. But the interpretational does not belong in the realm of the logically possible.

5. Is the interpretational, then, the normative in Aristotelian texts? The order, however, which this normative entails, does not participate in the realm of the possible, of the determined, or of the physical, as inferred from the Aristotelian texts. We do not stumble upon our experiences, nor do we let them flow over us like a stream. The unknown realm of values is the unlimited resource for the unending, uncertain and painful process of attributing meaning to our legal and scientific propositions. It is not in our capacity, however, as legal philosophers or as scientists to tell why nature or society conforms to a particular order or to any order at all. Whereas we may state general principles of interpretation of social legal and scientific facts, we can explain no further. This is indeed stressed by Aristotle, regarding our human vulnerability and incapacity. Aristotle (VII, 5, 1149 a20-25)<sup>26</sup> holds the view that incontinence of temper is actually less shameful than incontinence in respect of one's desires. Temper seems, he adds, to pay some attention to reason, but to hear it imperfectly. Aristotle offers further examples of eager servants, who go darting off before hearing the end of what is said to them, and then mistake their instructions. Dogs, he continues, bark at a mere noise before investigating whether it is a friend. In the same way, he continues, temper, owing to the heat and impetuosity of its nature, hears, but does not hear the order given, and so hurries to take revenge. For, Aristotle continues, when reason or imagination informs somebody that s/he is being insulted or slighted, temper infers, as it were, that such a person is to be treated as an enemy, and so instantly takes offence. But desire only needs reason or the senses to tell it that a thing is pleasant and sets off to enjoy it. Thus, temper, Aristotle continues, is amenable to reason up to a point, but desire is not. So desire is more disgraceful. The man who is incontinent of temper, is up to a point swayed by reason, but the other is swayed not by reason but by desire. Pakaluk, who comments on these excerpts, states that someone who suffers anger correctly reasons that the individuals who committed an injustice deserve punishment. S/he is right, Pakaluk continues, to be indignant when s/he realises this. S/he makes a kind of implicit mistake, however, if s/he attacks the other, as if s/he is the one who should rightly administer the punishment. Her/his mistake is located in the usurpation, not in the indignation. This departure from correct conduct, on account of some emotion even less similar to sensual desire, is described here in a vague and metaphorical sense. The conditions that define this departure from correct conduct have great relevance to millions of people for whom the alternative to a completely human life is a life at animal level or no life at all. The conditions for a completely human life have little relevance to millions such as those people for whom the alternative to this life is not one of social

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<sup>26</sup> Cf. Cottingham, *Rationalism*, 33 and n. 39; also Pakaluk, *Aristotle*, 253.

knowledge and its tools and values in sociological methodology. We see here a vigorous empiricist strain. Is reason then the pimp, or the janitor, or, as Hume would have wished, the slave of passions? Indeed, only an overall rational conception of social life and reality in general can guarantee order. And this absolutist strain leads us directly to a non-reductionist conception of legal statements regarding truth and justice. Legal statements in Aristotle embrace values thus limiting the idea of utility. This attempt to rectify past wrongs is alas unsuccessful. Putnam underlines this, arguing that belief in a pluralistic ideal is not the same thing as a belief that any idea of how to live is as good as any other. We may reject ideals of how to live as wrong, as infantile, as sick, as one-sided. We may at this point use Putnam's idea that the *real world* depends largely upon our values and our values depend on this world. Only within a specific set of circumstances may we ask for the realisation of intellectual values and freedom, outside of which the search for them would be non-sensical. It is pointless to search in Aristotle for unqualified freedom. Arbitrariness and relativism in the procedures that establish the Good Life by institutional means are unacceptable for practical reason.<sup>27</sup> Thus offenders and non-offenders are responsible<sup>28</sup> for the realisation of the democratic values that are protected by the aforementioned institutional sanctions. Proportion in equality determines freedom. We can see in *Politics*, 1281 b15ff, that all opposition between the general good and the basic liberties can be resolved at the moral level that determines equality as such. The basic liberties of those at the bottom of society condition the average good in order to promote it, we may infer from *Politics*, 1253, 1325 a5ff, 1337 a27ff. These procedures explain Aristotle's praise in *Politics*, 1296 a36, for a moderate character of the Constitution. All citizens have access to at least some offices, whereby they rule and are ruled by turns. The law's conflicting goals regarding social utility and individual justice will be balanced by social stability as determined by equality<sup>29</sup>. The middle class, those who are neither rich nor poor, are sufficiently numerous to hold the balance of power, Aristotle states in *Politics*, 1268 b25ff, 1292-1297 a, and thus to avoid relativism and rationalise the institutional means and the penal sanctions which are prerequisites for democracy. Any tension between individual justice and social utility is resolved at the moral level of the protection of social and political values. The circumstances under which we can meaningfully ask for this protection are determined by the penal laws. A concrete example which clarifies further these procedures is offered in *Politics*, 1330 a20. When the Athenian assembly deliberates on matters entailing the possibility of a conflict such as a war with a neighbouring city, the inhabitants of the frontier zone are excluded from the vote; for they could not vote without their particular interests overwhelming their motives, while the decision must be made on general grounds only. This again shows, Castoriadis states,<sup>30</sup> a conception diametrically opposed to the modern mentality of defense and of assertion of interests. We may infer from *Athenian Constitution*, VIII, 5, from *Rhetoric*, 1369 b17 and from *Politics*, VII, that basic liberties can be granted only if they protect equality.<sup>31</sup> A citizen who will not take sides while the city is in civil strife should be deprived of political rights. This means that s/he can no longer benefit from the protection that institutions and sanctions offer for the safeguarding of democratic values.

<sup>27</sup> Cf. Castoriadis, *Philosophy*, 37 ff.

<sup>28</sup> Cf. Magganas and Lazos, *Social Values*, 105-109; also G. Nikolopoulos, "Criminalisation."

<sup>29</sup> Cf. Dworkin, *Rights*, 12-13.

<sup>30</sup> Cf. Castoriadis, *Philosophy*, 111.

<sup>31</sup> Cf. Dworkin, "Philosophy," 223 ff.

6. Punishment, we may infer from *Nicomachean Ethics*, 1179 b, 1180 a, is nonsensical implying either retribution or social utility.<sup>32</sup> The effect of punishment<sup>33</sup> either as being a payment for crime (the retributive theory of punishment) or as producing exemplary sentences with beneficial consequences for society (the social utility theory thereof) cannot be guaranteed in Aristotle as being socially efficacious. And all questions of justifying punishment in Aristotle implies the weakness of a valid system of penal justice and our futile attempts to ever fully accomplish it. And thus institutional punishment must be taken as a prerequisite for democracy; neither as retribution nor as making examples.<sup>34</sup> This non-realist understanding is connected to major issues of rights necessity and rights relinquishing.<sup>35</sup> True, Aristotle (1132 a), considers the purpose of judicially imposed penalties to be the rectifying of past wrongs. But he also believes that the end can justify the means if the result of punishment is social improvement. Deterrence and prevention (1109 b34, 1180 a8, 1104 b17) can reduce the crime rate. The tension here between social utility and individual justice is resolved at the moral level of the protection of values, namely of freedom as determined by equality. But what kind of resolution is this? Unfortunately, however wide the field of doubts facing us, Aristotle's material reductionism is traced simply because it is the content of our experience, a reductionist one. Thus, according to Aristotle's pessimistic convictions standards of Truth lie in morals,<sup>36</sup> i.e., in practical

<sup>32</sup> Farsedakis, J. *Elements of Criminology*, 11 ff.

<sup>33</sup> Cf. Cottingham, "Punishment."

<sup>34</sup> Giouli, "Is Punishment for Water Rights Speculators in Chile non-Realist?"

<sup>35</sup> Giouli, "Penal Language;" also her "Ancient Greek Tragedy."

<sup>36</sup> One must refer at this point to a comment of Koraes to Beccaria, an Italian criminologist, 1738-1794, who links equality to associationism (φιλότης) regarding the meaning of the social institution of punishment. Adamantios Koraes, born in Smyrna in 1748 and died in 1833 in Paris, a brilliant Greek philologist and one of the intellectual instigators of the 1821 Greek Revolution, has stressed these procedures. Cf. Beccaria, *On Crimes*, ix, regarding an associationist epistemology behind Beccaria's utilitarian goal on equality in attributing punishment. Koraes, while commenting in the second edition of *Crimes*, 1823, and having translated it into Greek, derives this idea from Aristotle's use of leniency (ἐπιείκεια) in the attribution of punishment. Cf. MS 402 (1). All shortcomings regarding material reductionism of the philosophy of power and its epistemology in Aristotle can just possibly be surpassed. Cf. Xirogianni, "Koraes," nn. 12-13; Giouli, *Psychoanalysis*, 83-106; Giouli, *Philosophy of Punishment*, 75-77. One must refer here to Koraes' special note on his Preface and translation of Aristotle's *Politics*, MS. 402 (3), regarding the importance of Herodotus' "unguided (ἀκόλαστος) populace" (3,81,2) for Aristotle's parallel regarding his philosophy of State. Profligacy in Aristotle, however, (literarily in Greek "being unpunished") has nothing to do with the pleasures of learning (*Nicomachean Ethics*, III, 10, 1117 b28-1118 a1 in Young, "Aristotle on Temperance," 109-110). The body is in no way affected in the pleasures of the soul, Aristotle states. Profligacy thus has to do solely with bodily pleasures. Does this suggest Cartesian dualism? Definitely not. Thus, Aristotle continues, the sense with which self-indulgence is connected is the most widely shared of the senses; and self-indulgence would seem to be justly a matter of reproach, because it attaches to us not as Men but as animals. To delight in such things, then, Aristotle concludes, and to love them above all others, is brutish (b1-4, in "Aristotle on Temperance."); thus profligacy does not admit reason: How then can one overlook Aristotle's main line on material reductionism? Is there any remedy in this? This is a focal point of contradiction in Aristotle's philosophy of reasonable punishment. Cf. Giouli, *Punishment*, 29-31 and her *Psychoanalysis*, 83-106.

philosophy. We can meaningfully ask for such a realisation of values conditioned (1154 a4) by friendship and solidarity. Institutional penal sanctions safeguard democratic values since they serve laws the fulfillment of which is stated in *Politics*, 1155 a4, to be wisdom without desire (1287 a). And the basic rule that we should not be subjected to penal sanctions unless we have been proved guilty can be seen as a safeguard against the *punishment* of the innocent. Thus the power of the rulers is controlled by the ruled in order that the penal sanctions cannot be used for motives of revenge and utility. In well-blended constitutions therefore, we may infer from *Politics*, 1307 b32, if care should be taken to prevent men from committing any breach of the law, above all a minor breach should be guarded against, for transgression of the law creeps in unnoticed, just as the habit of spending small sums of money often ruins men's estates: the expense is not noticed because it does not come all at once, for the mind is led astray by the repeated small outlays, just like the sophistic puzzle, *if each is little, then all are little*. This is true, he states, in one way, but in another it is not, for the whole or total is not little, but made up of little parts. Can time's "thread" through one's lives be "knotted" here –to use Kierkegaard's metaphorical language? Aristotle easily dismisses all argument that can transform quantity into quality here; and by insisting on the dichotomy between facts and standards, insists on scepticism regarding the use of our thought-models. The authority lies altogether with the world; not with our angles and viewpoints regarding specific cases. We are only tenuously connected to a specific set of circumstances. Aristotle's complete objectivity leads him to believe that we cannot ever know that punishment is justified or is socially efficacious, whether we consider it as a retribution or as exemplary.

7. The fragility of goodness, i.e., human weakness can guarantee and safeguard these procedures as prerequisites for democracy. We have examined all such procedures from the idea that the effectiveness of punishment is unprovable. We cannot verify nor prove this false. Nevertheless, the analysis of revenge and utility as motives re-establishes the institutional character of punishment in order to humanise it.<sup>37</sup> Punishment is no longer considered to be a symbol of state-oppression and becomes a symbol of law.<sup>38</sup> The law of ostracism as practised in *Politics*, III-V, is not oppressive in the modern derogatory sense of the term punishment. Punishment as such could provide a technocratic approach to problematic situations leading to would-be tyrants. Nonetheless the idea of ostracism marks clear disapproval of extreme forms of political strife that would decompose and fragment the public space where history is played out according to the values of the period.<sup>39</sup> History and politics, then, would have become a mask for the assertion of unnecessary rights and of arbitrariness.<sup>40</sup> Punishment becomes a symbol of law which anticipates and can essentially prevent all aggression and crime by *paedeia*, we may infer from *Politics*, 1310 a14-20, and this without being oppressive, we see from *Posterior Analytics*, 73b, 83b.

## 8. Bibliography

Aristotle. *Posterior Analytics; On the Heavens*. In *The Complete Works of Aristotle*, Vol. 1. Edited by Jonathan Barnes. Princeton, New Jersey and Chichester, West Sussex: Princeton University Press, 1984.

<sup>37</sup> Cf. Farsedakis, *Inquisiveness*, 89.

<sup>38</sup> Cf. Cottingham, "Punishment," 780.

<sup>39</sup> Cf. Castoriadis, *Philosophy*, 112.

<sup>40</sup> Farsedakis, "The Criminal Law."

Aristotle. *Metaphysics; Nicomachean Ethics; Magna Moralia; Politics; Rhetoric*. In *The Complete Works of Aristotle*, Vol. 2. Edited by Jonathan Barnes. Princeton, New Jersey and Chichester, West Sussex: Princeton University Press, 1984.

Beccaria, Cesare, *An Essay on Crimes and Punishments*. With a Commentary by M. de Voltaire. A New Edition Corrected. Albany: W.C. Little & Co., 1872. In Beccaria. *“On Crimes and Punishments” and Other Writings* (Cambridge Texts in the History of Political Thought). Cambridge: Cambridge University Press, 1995.

Brogan, Walter A. *Heidegger and Aristotle, The Twofoldness of Being*. Albany, New York: SUNY, 2005.

Burke, T.E. *The Philosophy of Popper*. Manchester: Manchester University Press, 1983.

Burke, T.E. *Questions of Belief* (Avebury Series in Philosophy). Hants: Avebury, 1995.

Burke, T.E. *The Philosophy of Whitehead*. London: Greenwich Exchange Ltd, 2000.

Castoriadis, C. *Philosophy, Politics, Autonomy*. Oxford: Oxford University Press, 1991.

Charles, David. “Method and Argument in the Study of Aristotle, A Critical Notice of *The Cambridge Companion to Aristotle*.” Edited by C. C.W. Taylor, 231-257. In *Oxford Studies in Ancient Philosophy* XV. Oxford: Oxford University Press, 1997.

Charles, David and Scott, Dominic. “Aristotle on Well-Being and Intellectual Contemplation.” In *Proceedings of the Aristotelian Society, Supplementary Volumes* Vol. 73 (1999): 205-223 and 225-242.

Charles, David. *Aristotle on Meaning and Essence*. Oxford: Oxford University Press, 2000.

Cottingham, John. *Rationalism* (Paladin Movements and Ideas, edited by Justin Wintle). London: Paladin Books, Granada Publishing Ltd, 1984.

Cottingham, John. “The Philosophy of Punishment.” In *An Encyclopaedia of Philosophy*, edited by G.H.R. Parkinson, T.E. Burke, J.G. Cottingham, M.A. Proudfoot, J.E. Tiles, 762-783. London and New York: Routledge, 1988.

Courakis, N. “On Penal Ethnopsychology. Remarks on the Link Between Ethnopsychology and Penal Sociology,” in French. *L'Année Sociologique* 1982 (P.U.F. 1983): 391-414.

Courakis, N. “Financial Crime Today: Greece as a European Case Study.” *European Journal in Criminal Policy and Research*, 9 (2001), 197-219.

Courakis, N. “Criminal Law and Utopia,” in German. *Festschrift für Professor Dr. Manfred Seebode*, 3-13. Berlin: De Gruyter Verlag, 2008.

Dworkin, Ronald. *Taking Rights Seriously*. London: Duckworth, 1977.

Dworkin, Ronald. “Philosophy and Politics.” In Bryan Magee, *Men of Ideas, Dialogues with fifteen leading philosophers*, 210-228. Oxford: Oxford University Press, 1978.

Farsedakis, J. *Inquisiveness, Human Rights and the Birth of Criminality*, in Greek. Athens: Nomiki Vivliothiki Publications, 1984.

Farsedakis, J. “The Criminal Question in Classical Athens; Ideas and Reactions,” in French. *J. K. Papazachariou; In Memoriam*, vol B'. 1032. Athens: Panteion University, 1994.

Farsedakis, J. *Elements of Criminology*, in Greek. Athens: Nomiki Vivliothiki Publications, 1996.

Giouli, Virginia M. "Wittgenstein and the Philosophy of Punishment." In *Wittgenstein and the Future of Philosophy, A Reassessment after 50 Years*, sec. 2. Ethics, Psychology and Aesthetics, 24<sup>th</sup> International Wittgenstein Symposium, Contributions of the Austrian Ludwig Wittgenstein Society, IX, 1 (Kirchberg am Wechsel, 2001): pp. 257-262

Giouli, Virginia. M. *Philosophy of Punishment*, in Greek. Athens-Komotini: Anth. N. Sakkoulas, 2003.

Giouli, Virginia M. "Language and Morals in Murdoch's Works," in Greek. In *Φιλοσοφίας Αγώνισμα, Studies presented to Professor Konstantine Boudouris*. 125-133. Athens: Ionia Publications, 2004.

Giouli, Virginia M. "The Culture of Non-Punishment in Economic Crime," in French. *XXXIInd Congress of ASPLF*, Carthage, Tunisia (2008); *Filosofia Oggi*, 137-138 (January-June 2012): 83-90.

Giouli, Virginia M. *The Taming of Power: A Christian Critique of Theories of Historical Development* (edition based on PhD diss., DX179079 Thesis Number, The University of Reading, 1994) sponsored by Alpha Bank with a Preface by E. Moutsopoulos, Professor Emeritus of Philosophy, National and Kapodistrian University of Athens; Member of the Academy of Athens, President of The Hellenic Society for Philosophical Studies. Athens: Publications of The Hellenic Society for Philosophical Studies, 2012.

Giouli, Virginia. *How is Social Science Possible? An Aristotelian Critique of Normativity in Sociological Methodology*, sponsored by Dimitris Daskalopoulos. Athens: Livani Publishing, 2012.

Giouli, Virginia M. "Is Punishment for Water Rights Speculators in Chile non-Realist?" In *How is Social Science Possible? An Aristotelian Critique of Normativity in Sociological Methodology*, sponsored by Dimitris Daskalopoulos, 292-303. Athens: Livani Publishing, 2012.

Giouli, Virginia. *Psychoanalysis as the Route in the Social Sciences, the Example of the Middle East seen from an Aristotelian Angle*, in Greek, sponsored by Dimitris Daskalopoulos. Athens: Livani Publishing, 2012.

Giouli, Virginia M. "Penal Language and Philosophy of Punishment," in Greek. In *Psychoanalysis as the Route in the Social Sciences, the Example of the Middle East seen from an Aristotelian Angle*, in Greek, sponsored by Dimitris Daskalopoulos. 134. Athens: Livani Publishing, 2012.

Giouli, Virginia M. "The Idea of Punishment in Ancient Greek Tragedy: Reason and Rationality," in French, and *Fascicle of the synopsis of the contributions of the XXIXth Congress of the ASPLF, Reason's Future and Becoming*, The Azur Society for Philosophy (27<sup>th</sup> August-1<sup>st</sup> September 2002), Section 3.3 The judicial, pp. 27-28. In *Psychoanalysis as the Route in the Social Sciences, the Example of the Middle East seen from an Aristotelian Angle*, in Greek, sponsored by Dimitris Daskalopoulos. 166-187. Athens: Livani Publishing, 2012.

Giouli, Virginia M. "Relativity of Freedom in Plato's *Republic*," *Quaestio*, 19 (2019): 327-340.

Harré, Rom. "Persons and Powers." Edited by S.G.Shanker, 135-153. *Philosophy in Britain today*, New York: Suny Press, 1986.

Herodotus. *The Histories*. Edited by A.D. Godley. Accessed September 2019. <https://Perseus.tufts.edu>

Koraes, Adamantios. *Notes Beccaria. 1823*, in Greek. MS 402 (1). In MS 402, *Notes Beccaria. 1823; Notes in the Preface and translation of Aristotle's Politics; Aristotle's Ethics; Plutarch's Politics in proems and texts; Xenophon's Memorabilia and Plato's Gorgias*, JPEG Image, 4 pages, 0,18 length, 0,12 width. Manuscript Catalogues. Chios, Greece: The Koraes Library of Chios, 1823.

Koraes, Adamantios. *Notes in the preface and translation of Aristotle's Politics*, in Greek. MS 402 (3). In *MS 402, Notes Beccaria. 1823; Notes in the preface and translation of Aristotle's Politics; Aristotle's Ethics; Plutarch's Politics in proems and texts; Xenophon's Memorabilia and Plato's Gorgias*, JPEG Image, 4 pages, 0,18 length, 0,12 width. Manuscript Catalogues. Chios, Greece: The Koraes Library of Chios, 1823.

Magganas, A. and Lazos, G. *Offenders and Non-Offenders' Social Values*, in Greek. Athens: Panteion University, 1997.

Mayhew, Robert. "Part and Whole in Aristotle's Political Philosophy." *The Journal of Ethics*, 1, 4 (December 1997): 325-340.

Moutsopoulos, E. "Tolerance and Equity." in *Philosophy of Greek Culture*, in French, Academy of Athens, Centre of Research on Greek Philosophy (1998), 195-198

Nikolopoulos, G. "The Criminalisation of the Migration Policy and the New European Territorialities of Social Control." In *The Politics of Criminology: Critical Studies on Deviance and Social Control*. Edited by Stratos Georgoulas, 185-196. Münster: LIT Verlag, 2012.

Nussbaum, Martha C. *The Fragility of Goodness, Luck and Ethics in Greek Tragedy and Philosophy*. Cambridge: Cambridge University Press, 1986.

Pakaluk, Michael. *Aristotle's Nicomachean Ethics*. Cambridge: C.U.P., 2005.

Popper, Karl. *The Open Society and its Enemies*, vol 1. *Plato*. London and New York: Routledge, 1966.

Putnam, H. *Reason, Truth and History*. Cambridge: Cambridge University Press, 1981.

Rodriguez-Blanco, Veronica. "The Methodological Problem in Legal Theory : Normative and Descriptive Jurisprudence Revisited." *Ratio Juris*, 19, 1 (March 2006): 26-54.

Xirogianni, Panayota. "Koraes-Beccaria-Foucault: 'Healing and Punishing'," in Greek. In *Third Congress of the European Society of Neo-Hellenic Studies*, accessed November

2019, <https://eens.org>

Young, Charles M. "Aristotle on Temperance." In *Essays in Ancient Greek Philosophy IV: Aristotle's Ethics*, edited by John P. Anton and Anthony Preus, 107-126. New York: SUNY Press, August 20, 1991.