Aristotle and the Philosophy of Law: Dignity, Democracy, Diversity

CONVENORS: Nuno Coelho (Universidade de São Paulo)
Liesbeth Huppes-Cluysenaer (University of Amsterdam)

Language: English

Contact: nunocoelho@usp.br and huppes.uva@gmail.com

Description: This workshop joins researchers interested in the contribution of Aristotle to developments in Philosophy of Law. The aim of the workshop is comparative and by this perspective interesting links with the theme of the IVR-Conference 2019 can be made.
Different links to Aristotle are welcomed: from commentaries on his own texts to essays on contemporary issues explicitly illuminated by Aristotle and in express dialogue with his treatises on these.
The focuspoint of the workshop aligns with the conference theme: how can Aristotle help us understand contemporary concepts (and challenges) of dignity, democracy and diversity. There is attention for his thoughts about the *anthropos* as the only animal who has the *logos* (the political animal!); the nature and ends of political communities; authority, different regimes and justice; common good and personal flourishment; moral and technical agency; equality and unity versus valuable diversity; the combination of ruling and being ruled; the place of women, slaves and children in the political order…

These suggested focus points should not prevent, however, the submission of contributions which aim at other connections between Aristotle's works and the theme of the conference.

The workshop aims at instituting a community of researchers, which develops a wider range of activities. This will be the seventh IVR edition of the workshop, the meetings being held at Cracow (2007), Beijing (2009), Frankfurt (2011), Belo Horizonte (2013), Washington (2015) and Lissabon (2017). A reunion of the participants took place in Brazil in August 2010 and in Amsterdam in November 2014, a prospective meeting is planned in Amsterdam for November 2019. The contributions presented to the conference in Frankfurt have been published in 2013 by Springer: *Aristotle and the Philosophy of Law: Theory, Practice and Justice*, the contributions for the workshop in Amsterdam and IVR in Washington have been published by the same firm in 2018: *Aristotle on Emotions in Law and Politics.*

Abstracts should be sent to the contact-persons before 25 March 2019.
Papers have to be sent to the contact-persons ultimately before 1 June 2019.
See below for list with abstracts that have already been submitted. New abstract are welcome.

1. The Disunity of the Concept of Prudence

Wojciech Załuski

(Jagiellonian University, Krakow, zaluskiwojciech@gmail.com)

Contrary to the oft-made assertion (e.g., by Deirdre McCloskey in her book *The Bourgeois Virtues: Ethics for an Age of Commerce*) that the understanding of prudence has not changed essentially since the ancient times, it is argued in the paper that there are not only two *distinct* but also *incompatible* concepts of prudence: the modern ('bourgeois') – amoral or non-moral, and the classical (Aristotelian/Thomist) – strictly moral. The claim that they are distinct and incompatible implies that 'modern prudence' is not a component of 'classical prudence' but is essentially different from it: one cannot be prudent in both senses (for instance, part of modern prudence is continence/self-control, whereas classical prudence excludes continence/self-control). The paper also traces the causes of the evolution (or rather: revolution) in the understanding of prudence which took place in modern philosophy and argues for the need to return to the (unjustly forgotten) virtue of (classical) prudence.

2. Aristotle, Arendt and the Conditions of Justice

Stephen Riley

(Law School, University of Leicester UK)

Our conception of justice and its implications are challenged by problems that, if not new, have taken on new urgency: intergenerational justice, justice for minority groups, and responsibilities transcending our natural groupings. These are poorly served by prevailing practical philosophy where justice is understood as formal rather than substantive and justice is typically operationalised within a model of statist liberalism. I argue that these theoretical commitments, and in turn their limited application to contemporary problems, stem from the tendency (from Hume onwards) to treat justice as 'artificial' rather than 'natural'. I argue using the work of both Arendt and Aristotle that the proper response to this is to find ways of reintroducing the human condition into theorising about justice. This is not intended to naturalise *value*. Rather it seeks to identify what is substantively or naturally necessary in *the conditions of the possibility of justice*. These conditions provide the organising core of a theory of obligation.

Arendt's account of the human condition takes the inescapably temporal and agentic aspects of human life as the starting-point of a critique of both statist and formal understandings of justice. On this view, the conditions of justice are, first, diversity and plurality in human identity. Second, justice depends the protection of permission, both in governance through law but also in protecting the possibility of new forms of (group and individual) identity. And, third, the conditions of justice imply the continuing possibility of natural justice, i.e. that there are agents who can stand outside of specific disputes who are not themselves parties to disputes. Each of these has implication for our theories of obligation and of state responsibility in particular. Amongst other things, justice requires that we have a collective obligation to avoid complicity in intergenerational wrongs: such wrongs are not only a threat to diversity and permissive governance in the future, but *collective* responsibility for such wrongs denies the very possibility of natural justice.

This challenges important aspects of contemporary contractarian thought. But it is also a challenge to theoretical positions arguing for the 'natural' foundation of justice in virtue; unlike other modern theorists drawing on Aristotle, Arendt connects justice with obligations not character. This means looking to Aristotle not for an ethics, but for the conditions which allow the existence of justice at all.

3. Nature of the *polis*. How the nature of a man affects the nature of a state

Martin Koloušek

(Charles University, Faculty of Law (Czech Republic)

According to Aristotle, human is *zoón politikón*, a political animal. This claim, stated in Aristotle's *Politics*, is based in his studies of animals (*Historia animalium*). This statement, however, doesn't stand alone – Aristotle from this derives many implications about the nature of a *polis* and its relation to an individual. In Aristotle's view, since human is a political animal, it is natural for him to live in a society. From this Aristotle derives, that society, *polis*, takes precedence over an individual by nature. Contrary view is presented by Thomas Hobbes, who in his *Leviathan* notably challenged Aristotle's views. Thomas Hobbes believed that human is not a *zoón politikón*, that humans before the existence of state lived in a state of nature like animals. Only the need to avoid the terrible life in this state forced, according to Hobbes, people to create a state, an entity that governs them. In Hobbes's view therefore, state is an artificial entity.

Both approaches are quite acceptable, if one accepts their premises which arises from both authors political anthropology. If man is indeed a social, or political animal, the state is a natural being. If on the other hand man is an asocial animal, state is an artificial entity. Although it may seem that since the actual question of the origin of the state remains unanswered, those theoretical reflections are of no importance, both of those theories are important when formulating the legitimacy of a state, its relation to an individual etc. While both of those theories are hardly a historical account on the origin of the state, they provide us models according to which we can formulate answers to all sort of questions: what is the purpose of the state? Should a state be more liberal, or more authoritarian? Takes an individual precedence over a society, or the other way around?

In my paper I want to examine both approaches to the nature of the *polis* and the state and I will try to show how the political anthropology behind those concepts affects them and how important it is even when tackling today's issues.

4. The dualism of Aristotle

Liesbeth Huppes-Cluysenaer

(University of Amsterdam, huppes.uva@gmail.com)

Kelsen describes in his article *The Philosophy of Aristotle and the Hellenic-Macedonian Policy* that Aristotle in fact develops two opposite models of ideal regime: one for the city-state which is a mixture between oligarchism and democracy and one for big empires, which is the regime of monarchism. Kelsen explains this dualism by supposing that Aristotle wants to secretly win over the Athenian citizens to accepting Philippus of Macedonia as king of the federation of Greek states.

The paper explains the dualism of Aristotle as an example of his great genius. Aristotle understands that democracy is only possible in small states. Aristotle then concludes that given the threat of the Persian empire, there needs to be a bigger frame which works with a more absolutist logic and at the same time respects the autonomy of the small city-states in the same way as the small city-states respect the autonomy of the even smaller political organizations of the households.

Next to the dualism of political regimes, there is the dualism of Aristotle in acknowledging two different ethics: the civil ethics which addresses the political elite in the city-states and the contemplative ethics, which concerns the life-style (the life of a Monk according to Kelsen) needed for speculative theory focused on the understanding of the natural laws of biological and political life. Understanding such laws will enable a monarch to educate and steer citizens in an obedient good life of peace and prosperity. Civil ethics however will bring the citizens the autonomy needed for a spirited life.

Fitting the dualism into an evolutionary model or replacing it by a hierarchical model will result either in moral perfectionism or in technocracy. The crisis of contemporary democracy is caused by a battle between moral perfectionists and a-moral technocrats. Dualism offers a third way out.

5. Aristotle and Maimonides on source of law

Lucia Corso

(Kore University of Enna. Italy)

The paper aims at comparing the thoughts of Aristotle and Maimonides on the virtue of being governed by general rules rather than *ad hoc* decisions. Contrary to the thesis of Leo Strauss, who sees in Maimonides as a Plato's successor, it will be held that the position of Maimonides on the generality of law resembles that of Aristotle. It will be argued that the virtue of general laws runs through the centuries and gives ground to the idea that laws' imperfection is also a virtue.

However, three differences between Aristotle and Maimonides will be pointed out with regard to the idea of the rule of law:

First, the reasons given by Aristotle and Maimonides for the principle of the rule of law are very different;

Second, Aristotle and Maimonides hold a different approach towards equity.

Third, Aristotle and Maimonides advance different claims on the relationship of law and nature and on the idea of natural law.

6. Aristotle on woman's not sovereign rationality in Politics 1260a.

Nuno M. M. S. Coelho

(São Paulo, Brazil, (nunocoelho@usp.br)

In this paper, we'll focus on Aristotle's conception of feminine rationality revealed in *Politics* 1260 a 2-14 (transl. Trevor J. Saunders): "Thus it becomes clear that both must have a share in virtue, but that there are differences in it, just as there are among those who are by nature ruled. We have an immediate guide in the position in the case of the soul, where we find natural ruler and natural subject, whose virtues we say are different – that is, one belongs to the rational element, the other to the non-rational. Well then, it is clear that the same applies in the other cases too, so that most instances of ruling and being ruled are natural. For rule of free over slave, male over female, man over child, is exercised in different ways, because, while the parts of the soul are present in all of them, they are present in them in different ways. **The slave is completely without the deliberative element; the female has it, but it has no authority (akuron); the child has it, but undeveloped**."

After reviewing the main commentaries and interpretations about the passage, we'll try to understand it from its dialectical context and from the juridical meaning of the word *akuron* in Attic laws and judicial rhetoric.

7. Aristotelian Ideas of law and the participative democracy

Chen, Chi Shing

(National ChengChi University, College of Law, Taiwan))
Keywords: Aristotle, Law, Philia, Emotion

Aristotle believed a virtuous man will take less even when it is legal to do so (1136b21, 1138a1). Such a statement is puzzling and does not fit with his other teachings, even if one takes his idea of equity into consideration. An equitable man, Aristotle thought, is it truly just, because he will correct the law even when the law is legally just, but not truly just when applied in real situations. A truly just person should therefore take more or less when the correction of a legally just rule is needed, if we understand equity as a correction when the general rule meets the real situation. However, Aristotle insists one take less even it is legal to do so.

This paper submits an interpretation, which links with another Aristotelian idea of equality as ruling and being ruled in turn, since such participative democracy is best for the cultivation of citizens' virtues.

Aristotle also believed legislation is at its best when it aims at the cultivation of the virtues of citizens. Unlike Plato, who thought the law laid down by the philosopher king could help uplift the non-philosophers; Aristotle takes a scientific approach that emphasizes the actual practices of the citizens.

In the Rhetoric, Aristotle offers citizens ways to examine their decision making through legislation, adjudication, and praising. He also emphasizes giving the right emotive forces in the processes of persuasion. The emotion of piety also urges people to further explore whether one deserves the pain one suffers. Taking these teachings of Aristotle seriously, one should not be surprised at his remark; that justice is expendable when polis embraces philia and that philia is still needed even the polis becomes just. One will also not be surprised at Aristotelian preaching that one should take less when it is legal to do so.

8. The Place of Women in the Political Order in Aristotle: Diversity and Equality

Irina Borshch

(Ecclesiastical Institutions Research Laboratory, St. Tikhon's Orthodox University (Moscow, Russia)).

Aristotle's critique of the Plato's utopian idea of community of property and women shows that the existence of private life in the political community is necessary because it makes life more beautiful and prosperous. A woman plays a special role in preserving the diversity within the society; she strengthens in a man the strength of affection for a particular: affection between a man and a woman, between parents and children, affection for a particular home. The childbirth is not just a necessity, similar to slave anonymous labor, but is a visible symbol of the child's concrete connection to the mother, and through her, in legal marriage, to the father. The common property will not free women, because the united households will cease to be the expression of the will of one husband, but will become the expression of some other managers and the place of conflicts. According to Aristotle, the community of women would be more appropriate to the lower class (probably non-citizens) than to the governors, because, thus, eroding the boundaries of the union between a man and a woman, parents and children, the law weakens feelings («watery love») and makes people more manageable. In the political model of Aristotle, women are diverse from men, but also every woman is different from another woman. The relations between free women cannot be compared with the relations between free men, but in a certain sense are like the relations between policies (international relations), since each house has its own land and border. A free woman cannot be a participant in political communication, not only because she is deprived of leisure time by being engaged in childbearing and childcare, but because she is a promoter of a certain form of beauty within a particular household.

9. Würde, Dignity, Axios (Megalopsuchia). Reasoning on the Contemporary Debate in the Light of some Aristotelian Insights

Giovanni Bombelli

(Catholic University of Milan – Italy)

The concept of "dignity" characterizes the current philosophical-legal debate: from constitutional Charters to the role of the Courts. Three examples: a) the basilar concept of "Würde" in the German Constitution (art. 1); b) the overlapping concepts of "person" and "individual (subject)" within some international documents; c) the "creation" of the concept of "dignity" by international Courts.

Within this scenario the notion of "dignity" oscillates between two poles: the increasing relevance assigned *through the concept of dignity* to the individual dimension and the social-collective role conferred to dignity (but the less and less importance of the "social horizon", including its Aristotelian echoes, which is *not* necessarily coincident with the idea of democracy). Accordingly two corollaries emerge: a) the idea of "dignity" is "recovered" *through* (legal) argumentation; b) the concept of "dignity" is rediscovered in an individual perspective and with regard to *specific* questions (i.e.

unemployment, migration, new forms of slavery) as "social dignity" and/or ontological (natural) quality.

Hence the necessity to deepen Aristotle's outlook in order to better understand the contemporary debate. Considered as a rethinking of Plato's concept of *axios* the Aristotelian idea of dignity (especially in *Eudemian Ethics*, *Nicomachean Ethics* and *Politics*) fundamentally presents a social character, which is based on the notion of "*megalopsuchia*". Nevertheless on closer inspection the Aristotelian dignity constitutes a "mixed (polar) concept": social dimension (the idea of "honor"/ "pride" as an emancipatory dynamics) and moral-ontological quality (a form of strength of mind), which is peculiar only to *some* people (different from our idea of universal dignity).

Aristotle's perspective frequently re-emerges in connection with contemporary topics related to the ideas of "diversity" and "difference", especially in the light of democratic-constitutional contexts. For instance Sheila Benhabib's outlook (it implies a possible combination of public debate, modernity and Aristotelian background) or Martha Nussbaum's notion of *capability*: a re-discovery of the Aristotelian idea of ontological/dynamic identity (i.e. dignity as a "objective" dimension) including its social background (i.e. dignity as a context-based level) in a post-modern/pluralist framework, which takes the form of dynamic recognition. Can Nussbaum's concept of *capability* synthesize the notion of dignity as a universal dimension (but different from Aristotle's elitist perspective) and as an emancipatory force within societies dominated by the question of the individual/collective "difference"? Starting from this rethinking of some Aristotelian insights the "representative" nature of dignity emerges: from Niklas Luhmann's model of dignity as a "representation" (*Grundrecht*) to Avishai Margalit's notion of "decent society" (however Margalit criticizes the concept of dignity). Even though different from Aristotle's framework, these approaches emphasize the unescapable social nature of dignity.

The Aristotelian contribution to the contemporary debate on dignity can be summarized in four points: a) the argumentative nature of dignity; b) the *double level (conceptual and contextual) of the argumentation on dignity*; c) the *practical dimension* of dignity; d) the (problematic) "universalization" of Aristotle's perspective *in a democratic-constitutional context*.

10. Aristotle on the Philosopher as an Arbitrator

Tomi Hämäläinen
(University of Helsinki, Finland)
Keywords: Legal arbitration, Aristotle, dialectics, method, ancient Greek law

I will examine the relationship between philosophical, especially ethical, conflict resolution and legal arbitration in ancient Athens. Aristotle equated legal arbitration with the practice of philosophy.
Aristotle's ethics can be seen as founded on the idea of a compromise-seeking dialogue. Similar dialogues were also carried out by legal arbitrators when they tried to resolve private legal
disputes. In several of his texts, Aristotle draws an explicit parallel between the dialectical philosopher and the arbitrator: they both act impartially in cross-examining the parties, asses the validity of their arguments, and try to determine to what extent they are telling the truth.
Moreover, Aristotle sees the aim of legal arbitration as identical with that of ethics: both promote equity by trying to reveal the causes of conflicts and reconcile the parties by means of a
rational compromise. In short, my thesis is that Aristotle's views on legal arbitration do throw light on his views on law, ethics, and even philosophy in general.

11. Private Ownership: Aristotle and Alexander

Alfonso Ballesteros
(University of A Coruña, Spain) alfonso.ballesteros@udc.es

Aristotle recommends private ownership as a general principle against the "communal property" advocated by Plato. There are advantages that can give us arguments in favour of individual ownership of property; one refers to the relation of the individual to himself and other links property to the

pleasure of doing good to others. [1] Aristotle states that there is an immense amount of pleasure derived from the ownership of private property. But this fond of oneself is not selfishness as the following shows. [2] A further point in favour of private property is that is a necessary condition to develop a virtue, liberality, with regard to property: "there is very great pleasure in helping and doing favours to friends and strangers [ε] and this happens when people have property of their own" (*Politics* 1263a40).

Property ownership and belonging to a community are not conflicting according to Aristotle. One of the most recent publications on property law and its foundations is "Property and Human Flourishing" by Gregory S. Alexander (OUP, 2018), expressly inspired in Aristotle although not Aristotelian according to the author. The author insists precisely in the link between private property autonomy and belonging to a community against the false modern dilemma.