SW 24: **Aristotle and the Philosophy of Law: Dignity, Democracy and Diversity**
Language: English
Scheduled Thursday 11 July: am and pm

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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...

Paper Presentations

1. The Dualism of Prudence

Wojciech Załuski (11.00-11.30)
(Jagiellonian University, Krakow, zaluskiwojciech@gmail.com)

Contrary to the oft-made (often implicitly) assumption (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 that within ethics which assumes the classical understanding of prudence there is no place for what Sidgwick called the 'dualism of practical reason'.

2. The Dualism of Aristotle

Liesbeth Huppes-Cluysenaer (11.30-12.00)
(University of Amsterdam, huppes.uva@gmail.com)

Kelsen describes in his article *The Philosophy of Aristotle and the Hellenic-Macedonian Policy* three parallel inconsistencies in Aristotle's works: in *Metaphysics* monotheism is defended as well as polytheism; in *Nicomachean Ethics* an active and a contemplative ethics; in *Politics* democracy is called the ideal regime, but hereditary monarchism as well. Kelsen explains these inconsistencies by supposing that Aristotle wants to secretly win over the Athenian citizens who were democrats) to accepting Philippus of Macedonia as king of the federation of Greek states and thus become monarchists.

The paper explains the three inconsistenceis as three conscious dualisms, which are founded in Aristotle's dualist theory of science. The dualisms explain the tight connection in Aristotle's thought between his theory of science, his view on ethics and his politics.

3. Aristotle and Maimonides on source of law

Lucia Corso (12.00-12.30)

(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.

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

Irina Borshch ((12.30-13.00)

(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.

5. Aristotle on the Philosopher as an Arbitrator

Tomi Hämäläinen (14.00-14.30)
(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.

6. Aristotle and the Origins of Responsibility

Juho Joensuu (14.30-15.00)
(University of Helsinki, Finland)
Keywords: Aristotle, Responsibility, Athenian Polity, Institutions, Constitution, Ancient Greek Law

Aristotle's analysis of responsibility as elaborated in the *Nicomachean Ethics* is considered as the first systematic account of the notion. The aim of this paper is to analyze it in relation to political institutions of the Athenian polity, especially the ones called '*dokimasia*' and '*euthyna*'. Aristotle's analysis has laid the ground for today's conceptual analyses of responsibility, yet Ancient Greeks had no abstract concept of, nor any general term for what we would call "responsibility". Instead, Aristotle examined concrete practices of praising and blaming, rewarding and punishing, in order to determine the preconditions that make such communal reactions justifiable and reasonable.

Instead of providing a detailed account of Aristotle's analysis of responsibility, I will focus on an issue that has remained overlooked but through which one can reveal the very constitution of his action theory. In his analysis, Aristotle utilizes the view of the political structure and institutions as counterparts when he structures the basic notions of his action theory at the individual level. For example, he makes a distinction between *hekousion* and *akousion*, usually translated as voluntary and involuntary, and employs '*aitia*' often taken as the concept of cause. These interpretations are often appropriate but they are also apt to conceal the connection to the institutional structure. So I argue that the origin of his notion of "voluntary actions" lies in the institution that grants citizens the authority and capacity (ἐξουσία) that constitutes the core characteristic of a citizen, his own initiative. As far as the notion of "cause" is concerned, one can find its origin in the institutions of questioning and accusation (αἰτία) which open a discursive space for citizens to seek for reasons and causes and to give accounts and explanations. The same also holds true with the other action-theoretical notions, such as "will" (βουλή), "deliberation" (βούλευσις) and "choice" (προαίρεσις).

Finally, I will conclude my analysis with an overview of the political structure that forms the status of, and sets limits for a citizen as entrusted with a permission to make promises and recognized as able to vouch for himself. I highlight the institutions of *dokimasia* and *euthyna* to show how this structure constituted the conceptual framework for the way in which Aristotle analyzed (moral or legal) responsibility. The *dokimasia* ('trial', 'proof' in Modern Greek) was the examination of virtues to ascertain the aptitude of the candidates for citizenship or public office, for coping with the burden. The *euthyna* ('responsibility', 'accountability' in Modern Greek) was the examination of accounts and actions, which every public officer had to undergo at the end of the term. This refers to (political) accountability as a constitutive frame to analyze prospective (position of care) and

retrospective (being called to account) dimensions of responsibility at the individual level. The political constitution is parallel with the inner constitution of a citizen. Aristotle analyses this with the notion of individual *ethos* in his virtue ethics that is a theoretical part of his political science.

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

Giovanni Bombelli (15.00-15.30)
(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*.

8. Aristotle, Arendt and the Conditions of Justice

Stephen Riley (15.30-16.00)
(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.

9. The Ego Without City: Dystopian Emotions and Aristotle's Political Virtues

Tommi Ralli (16.30-17.00)
(University of Bremen, ralli@uni-bremen.de)

According to *Eudemian Ethics* 7, malicious persons can only have allies and other utility friendships (besides friendships based on pleasure). They cannot have the stable, primary friendship. I consider the consequence of this absence of true friends for rationality. This is the first aim of the paper. The second aim of the paper is to move from these reflections to Aristotle's famed discussion on the creature without city in *Politics* 1. He said about human nature that we are a political animal, but he continued that a creature without city is a beast or a god and craves for war. Let us think of the creature without city who is not a self-sufficient god. Although unable to live in company, he or she will long for connection like any human being regardless of the bestial language in the line about beast or god. A god would not long to connect, Aristotle thought, but a god is the wrong comparator for even the most independent persons in the aspect of friendship, as a god does not need a friend (1245b14–19). Solitariness is, on the other hand, a fully recognised part of human nature. Thus, we shall concentrate on the solitudinous ones who long to connect but cannot. Finally, the paper examines some characteristics of such people, among others, the emotions they cause and go through themselves, tactical calculations, oratory about themselves and the recognition they deserve, and the following of rules when it shows to others.

10. From Aristotle's *politikón díkaion* to the Rule of Law State

José de Sousa e Brito (17.00-17.30)

(Judge of the Tribunal Constitucional (Portugal) emeritus)

Of politikón díkaion, says Aristotle, part is natural, part conventional (EN 1134b 18-19). politikón díkaion means here the law of the pólis. in so far as such a state has a just constitution. When Aristotle begins his enquiry about the politikón díkaion, before its division in natural and conventional, Aristotle describes it so: "this is found among men who share their life with a view to self-sufficiency, men who are are free and either proportionately or arithmetically equal" (1134a 26-28). Subsequently he adds that it depends upon law and exists only among those with whom law is a natural institution and these are those who are equal in ruling and being ruled (1134b 13-15). He specifies also why the law is a natural institution: it is natural because it is rational. Therefore he says: "this is why we do not allow a man to rule, but reason" (1134a 35) Such a description of the essential constitution of the pólis is close enough to todays concept of the rule of law state to allow for a rational reconstruction of Aristotle thought about natural law and conventional law as a theory of the rule of law state. Such a reconstruction implies a devaluation of what Aristoteles says about slaves, woman, children and barbarians, all of which would in some way fail in rationality or liberty and therefore could not be treated as equal.

11. Aristotelian Ideas of Law and the Participative Democracy

Chen, Chi Shing (17.30-18.00)

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

Aristotle believed that a virtuous man tends to take less than his share (1136b21) and an "equitable man" "tends to take less than his share though he has the law on his side (1138a1). Such a statement is at first sight seems puzzling and does not seem to fit well with his emphasis on the rule of law. In his treatment of equity and the equitable (1137a33/34) Aristotle explains however that equity and justice appear to be neither absolutely similar nor generically different. An equitable man, Aristotle thought, is truly just because he will correct the law when the law is legally just like a universal statement, but not truly just when applied in real situations (1137b12). Should one then have more when equity demands so according to the real situation? The puzzle remains.
Recently, scholars have placed greater emphasis on the emotional aspects of Aristotelian ideas of equity, holding that sympathy leads one to take less. Although Aristotle believes that an equitable person is truly sympathetic by reacting with proper emotive forces, this paper argues that friendship, not sympathy, is the basis for the equitable person choosing to take less. The Aristotelian equitable man is exemplary, as he embraces not only reason and emotion in a concordant way, but also truly appreciates friendship.
For Aristotle, equality also means ruling and being ruled in turn; he may think such a participative democracy is good for the cultivation of equitable citizens. In the Rhetoric, Aristotle offers citizens ways to examine their convictions in the process of legislation, adjudication, and praising. He also emphasizes the importance of employing the right emotive forces when one persuades and is being persuaded; for example, pity urges citizens to think twice whether someone deserves the pain he suffers.
Aristotle's virtuous and equitable persons tend to take less even when they have the law on their side because they understand that friendly feelings better unite the polis. This is also why he believes that philia holds the polis together, that strict justice is expendable when polis embraces philia, and that philia is still needed even when the polis has become just (1155a27).

12. Aristotelian Equity and Legal Certainty: approximation, detachment, and examples in Brazilian law

Luan Luna (18.00-18.30)
(Faculty of Ceará Paradise- Brazil)
Lissa Furtado
(Graduated at Universidade Regional do Cariri – URCA)
Keywords: Aristotelian equity. Legal certainty. Brazilian law.

In *Nicomachean Ethics*, Aristotle develops the foundations of his theory of justice, notably in Book V. In the final part of this section, The Philosopher deals with equity and its relations with justice and the just, establishing it as a kind of justice that aims to the correction of the law because of its aspect of universality. The use of equity as an instrument of the positive law represents a challenge to the understanding of the contemporary philosophy of law, notably marked by the legal certainty paradigm. The objectives of this article are to demonstrate how Aristotle's equity relates to the ideas of legal certainty of legal positivism and to present elements of Brazilian positive law that consecrate the conception of equity as an element of legal correction. In order to reach these objectives, it was used the consultation in books and academic articles where it was possible to find theoretical foundations on the main concepts, relating them to each other to arrive at the considerations. As results and discussions, it was possible to perceive that the Aristotelian view of equity finds it difficult to reconcile with the notions of legal positivism on legal certainty. This is because one of the central elements of positivist theories is the search for reliable criteria for decisions, which goes against the Aristotelian maxims of equity. It is perceived that authors like Immanuel Kant called the equity "ambiguous right", because of its imprecision. On the other hand, it is noted that at the same time and for the same reason that Aristotle justifies the use of equity, legal-based systems creates mechanisms to correct the universality of the law for concrete cases. Going further, there are many Brazilian acts that provide the use of equity as a secondary source of law and even judgment criteria for lawsuits. By way of final considerations, it was possible to note a relative impossibility of reconciling the Aristotelian idea of equity with the central paradigms of legal positivism, especially the notion of legal certainty. However, at the same time, it is seen that the universality of the acts is a problem recognized by the legal systems, Brazilian law included, which provides mechanisms for solving this problem in the manner thought by Aristotle and even embracing equity as a criterion for the administration of justice.