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The Iranian Yearbook of Phenomenology

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Natural Community and the Limits of Laws in Aristotle

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Abstract

In his interpretation of Aristotle, Heidegger points out that Aristotle's natural community is part and parcel of his more general attempt to account for the presencing (ousia) of things in nature (physis). That is, in order for things in nature to be they need to fulfill their definitions. Consequently, for humans, community is the place where humans as life-possessing-logos (zoōn logon ekhon) and at the same time life-in-the-polis (zoōn politikon) can reveal their genuine definition (horismos). This will render possible the first formulation of the community as a natural community. Yet, just like the status of abnormalities and accidents in nature, prioritizing the fulfillment of justice as laws of the society over the singular expression of individuals would eventually complicate the status of justice with regard to the abnormal and unprecedented cases. Derrida's critique of the laws shed a good light on the limitation of all laws with a universal claim which will be applied here to the Aristotelian formulation of them. Finally, this essay highlights the moments that Aristotle's admission of the impossibility of universal laws provides the possibility of alternative comportment towards otherness and alternative ethics. In effect, it is Aristotle's mistake or "missing the mark" (hamartia) that opens the door for a new mode of following the laws, I call nomadic following.

Keywords: Phenomenology, Deconstruction, Laws, Justice, Aristotle.



Introduction: Aristotle's Political Physics

It can be argued that the genesis of laws, community, and justice in Aristotle is part and parcel of his more general strategy to explain multiplicity and difference in nature. John Protevi, for example, contends that Aristotle accounts for the change in nature through general schemata and principles, including *hylomorphism* and *teleology* (Protevi, 1994, p. 46). Through these schemata, Aristotle has created new repeatable idealities for the science of nature.

At the beginning of Book, A of the *Physics*, Aristotle gives two rival interpretations of nature (*physis*): the material (*hylē*) and the form (*morphē*) (*Physics*, 193a 28-31). To account for the generation of singular beings, he suggests that the immanent motion (*kinesis*) in nature (*physis*) generates beings out of a potential material (*hylē*) towards an actual look (*eidos*) which is the informed matter (*hylomorph*). Therefore, Aristotle situates the generating force of difference within both material mixture and form (Protevi, 2001, pp. 79-81).

It is important to notice that through *hylē*, Aristotle is pointing to the material mixture of change which is the source of individuation as well. To explain multiplicity in nature, he ventures to take into account this corporeal material force in-depth (i.e., still not realized in actuality) which can potentially come to the surface (i.e., realized in actuality as the look (*eidos*)) in an unanticipated way. That is why he quickly takes control of this potentially unlimited (*aperon*) source of motion (*energeia ateles*) in nature by limiting it to the form (*morphē*). According to Walter Brogan (2005),

inasmuch as it is addressed from the point of view of form (*morphē*), material (*hylē*) co-constitutes the being of natural beings. When the *hylē* gathers itself (*kinēsis*) in its proper place and stands forth as the being it is (*eidos* as *morphē*), then *hylē* is the *ousia* of natural beings. (*Met.*, 1042a 32; Brogan, 84)

This means that the immanent motion (*kinēsis*) in the material (*hylē*) has to be headed towards its proper end (*telos*) in its look (*eidos*), hence *teleology* and *hylomorphism*. “The essential characteristic of natural movement is that it originates out of and toward itself while remaining in itself” (Brogan, 2005, p. 86).[1] *Hylomorphism* in this manner, for Aristotle, does not mean that there is some dark matter before the formation of something which could



potentially be used otherwise. Material (*hylē*) is part of the definition of a thing as long as it is already formed.

For Aristotle, it is only retrospectively and by a reversal that the material exists as potency (*dynamis*). The most original motion of the material, for Aristotle, is the one that leaves nothing unaccounted for or un-formed. In fact, as long as un-formed, unlimited (*aperon*) matter is indefinite and unaccounted for, it is either accidental or bestial. On the other hand, he admits that in natural generation and the generation of animals accidents, monstrosities, deformities, and abnormalities happen precisely thanks to the unknown motion within the material mixture (*Physics*, 199b15–19; GA. 4.3. 767b10-15 cited by Protevi, 2001, p. 79). The existence of such exceptions clearly threatens the integrity of the system of laws in such a way that they cannot *always* anticipate the individual occurrence of events.

Joe Sachs confirms this in his introduction to the *Physics* where he mentions that Aristotle's daring attempt to explain generation and motion comes at a simple cost. He writes:

Aristotle speaks of the patterns of nature as present not *always* but "for the most part." His way of understanding the causes of things does not do violence either to the stability or to the variability of the world, but affirms the unfailing newness-within-sameness that we observe in the return of the seasons and the generations of living things. (Sachs, 1995, p. 25, my emphasis)

That is to say that Aristotle's principles explain motion and generation in nature "for the most part" in spite of the exceptional abnormalities and accidents. One may even go as far as claiming that the wonder which, as he points out in the opening of the *Metaphysics* (1. 982b 15-20), instigates philosophical inquiry, is not before some indescribable or unaccountable (*alogon*) unprecedented event. Quite the contrary, it is only repetitive events that call for an explanation.

The same is true for the human community and its gathering. Justice and laws act as a form (*morphē*) that puts the singular character of each citizen (like *hylē*) in line with the end of the city to bring happiness for all. Therefore, unlike modern formulations of community in terms of the "social contract" as a break from the "state of nature," for Aristotle, the laws or *nomos* of human community do not interrupt the "state of nature." One's true freedom and happiness are not compromised in a community with others. Quite the contrary, as Heidegger maintains humans as life-possessing-speech (*zōōn logon*

ekhon) and at the same time life-in-the-city (*zōōn politikon*) are only able to fulfill their definition and function (their *telos*, form (*morphē*)) in the city (*polis*) and in speaking-with-one-another and in negotiating within the limits of ordinary speech (*logos* as *kurion*) (Heidegger, 2009, p. 33; *Politics*, 1253a9). Consequently, any critique of laws (*nomos*) and limits of the city, in Aristotle, has to address the definition of human, his nature (*physei*), and his end.

In this essay, through a deconstructive intervention in the genesis of justice as laws, I will argue that by “missing the mark” (*hamartia*) in establishing the universal laws, Aristotle has effectively allowed a new mode of calculation (beyond *phronesis*) and community to come to pass. That is to say, Aristotle’s own admission of the state of exception to the general principles in establishing justice through laws in the city generates an alternative form of gathering at the limits of the laws which is *a-teleological* or *nomadic*. Aristotle does not explain the nature of this nomadic gathering and dismisses it as abnormal and accidental by which he systematically prioritizes the generation of the same and similar over the different and the unfamiliar. On the contrary, I suggest that this mode of calculation at the limits of the laws is akin to a deconstructive intervention.

Natural Community and the Mystical Foundation of Laws

In the city and the realm of politics, the challenge that Aristotle takes on is the implementation of the laws of nature, namely the ones that realize the genuine definition of individuals, in social and economic interactions. Yet, the economic and political needs of the city complicate this process in such a way that makes the immanent expression of individuals and their singular relation to one another in the city contrary to the inevitable impersonal and authoritative character of the laws of the community. As a result, even private virtues need to change essentially to fit the socio-economic context of the exchange with others.

The Ambiguous Nature of Justice

In the discussion of what justice is in Book V of the *Nicomachean Ethics*, in line with his more general hylomorphic principle, Aristotle talks about justice in terms of a *characteristic* that drives actions in general. Justice (*dikaiosunē*), He writes, is “‘that characteristic’ which

makes them [i.e., people] performers of just actions” (*NE.*, 5.1.1129a 7-9). Aristotle portrays justice as a driving force that makes bodies move or act in a certain way. Moreover, “All forms of justice in its particular sense are opposed to greed (*pleonexia*), the desire to have more of some good thing than one deserves” (*NE.*, 1129b 1-10). Thus, justice involves a quantitative judgment, even when the things judged are not strictly measurable. This quasi-mathematical aspect of justice means that the judgments that govern choices of just from unjust constitute the form (*morphē*) of *all* virtues. If the final cause of all virtues is the Good or the Beautiful, then justice is the formal cause of virtues.[2]

Yet, Aristotle notices that on the way from the singular expression (*idion*) of virtues to their public expression (*kurion*), from the form of all virtues to the actual consideration of others in society the nature and the use of “justice and injustice” have changed or have become ambiguous (*NE.*, 5.1.1129a). He writes:

Justice is, most properly, an active condition of the soul by which one chooses neither more nor less than one’s fair share of those goods that one can have (by depriving others of them); this is the justice that is a *part* of virtue, but the word is also used for the *whole* of virtue, regarded as a relation toward other people. (*NE.*, 1129b 26-27, my emphasis)

He tries to equate this ambiguity with a polysemy or analogy, or different instances of the more general category of justice which can be subsumed entirely. The first kind he defines as immanently in relation to how an individual perceives the good and the beautiful for himself, the other, and the city. The second kind is defined as the social or communal force that makes sense of the action and characters in public, and that makes actions subject to the judgment of public reason. The former he calls “fairness” (*epieikeia*) and the latter “the lawful” (*NE.*, 5.1.1129a 30). Nonetheless, Aristotle strives to prove that the being of man is such that the same rational and calculative operation is involved both in individual decision making for example for determining the golden mean of virtues and the good of humans in private and the judgments and jurisdictions in the public and political domain. Thus, in determining the golden mean of virtues, for example, one activates the same deliberative and *phronetic* intellectual virtue that informs the decision-making of the judges in public.

The unjust [person] is both a lawbreaker and unfair and takes more than his share. So that obviously a law-abiding and a fair man

will be just. Consequently, ‘just’ is what is lawful and fair. (*NE.*, 5.1.1129a 30-35)

According to this definition, justice is defined as the political or social virtue that keeps society balanced as well as the political virtue that guarantees the well-being and flourishing of an individual. It has a normative value implicated in law. Justice in conformity with Aristotle’s *teleological, hylomorphic* metaphysical system guarantees his desired logocentric body-politics in the social domain.[3] This is what Trott (2014), among others, calls the natural community in Aristotle (Trott, 2014, pp. 105-109).

The rest of book V consists mostly of Aristotle’s attempt to establish partial justice (justice as laws) and to prove that it is homogenous with the perfect form of justice (*NE.* 5.10.1137b 8). Partial and perfect justice are both derived from the force of a natural intellectual virtue, i.e., practical wisdom (*phronēsis*) and involve a mathematical and rational calculation, which from Book III we learn, is called deliberation (*boulē, bouleusis*). He explains how the force of justice makes possible the laws that guarantee the happiness of the whole while also determining the characteristic difference of individuals. At this point, a careful reader could anticipate that much like any tragic character, Aristotle’s missing the mark (*hamartia*) and “misrecognition” of the fundamental caveat between private and public character of individuals would certainly haunt his clear-cut divisions later in the discussion.

The Mystical Foundation of Laws

As we enter the public realm, the incentive for a more concrete yet more arbitrary and repeatable measure of calculation and judgment increases. We are drawn toward the laws (*nomoi*) that are becoming increasingly like a machine with a character of repeatability, stability, and efficiency for all. “Proportionate equality of benefits to burdens and contributions stabilizes the city by giving all parties reason to cooperate and benefit one another” (*Politics*, 5.8 1307b26-8a13). Aristotle wants to ensure that when the opportunity arises, one knowingly makes the morally appropriate decision in society. The laws as a means of justice provide the political infrastructure to educate and mold the desires of individuals. Anyone who works according to or is “appointed by” the laws is in harmonic relation with

the whole. He contends that “every community is established for the sake of some good, since everyone does everything for the sake of what they think to be good” (*Politics*, 1.1 1252a2-3). And modifies his assertion a couple of lines later writing: “justice is whatever promotes and preserves that *common* good” (*Politics*, 3.12 1282b17, paraphrased at *NE.*, 5.1 1129b25-27).

Gradually, the good of the city determined by the laws and created through an adherence to them enjoys preference over the characteristic differences of individuals. To guarantee the common good, Aristotle very quickly connects this to the program of the city and political science, or the “most governing and most master art,” (*NE.* 1094a 30) that puts all other forms of knowledge in their most proper place. Political science, he contends, “...lays down the law about what one ought to do and from what one ought to refrain, the end of this capacity should include the ends of the other pursuits, so that this end would be the human good” (*NE.*, 1094b 4-6). Political science establishes laws that work automatically like natural laws and determines what is just for every possible situation and in accordance with *logos*. The political laws work to achieve the best and most *hylomorphic* results or the ones that commonly occur and are anticipated by the laws. He writes:

Will it not better enable us to attain what is fitting, like *archers having a target to aim at*? If this be so, we ought to make an attempt to determine at all events in outline what exactly this Supreme Good is, and of which of the theoretical or practical sciences it is the object. Now, it would be agreed that it must be the object of the most authoritative of the sciences—some science which is pre-eminently a master-craft. But such is manifestly the science of Politics. (*NE.*, 1. 1094a 23-28, my emphasis)

Aristotle considers political science as the best and most ruling science to help every individual hit the target or avoid “missing the mark” (*hamartia*). This is an indication that hitting the *teleological* and *hylomorphic* targets and not missing the mark is considered the most just and noble and is systematically preferred. This hylomorphic, appropriate target is the end of the city.

For even if the good is the same for one person and for a city, that of the city appears to be greater, at least, and more complete both to achieve and to preserve; for even if it is achieved for only one person that is something to be satisfied with, but for a people or for cities it is

something more beautiful and *more divine*. So, our pursuit aims at this, and is in a certain way political. (*NE.*, 1094b 8-11, my emphasis)

Aristotle acknowledges that the good choices (*proairesis*) of individuals are important and can have positive outcomes, but he attributes divinity to the good of the city as a whole. Aristotle admits that the happiness of the state, which is a form of *energeia*, is divine, like the unmoved mover or the perfect circulation of cosmos. The divinity that Aristotle attributes to the good of the city is associated with how things are from the divine or eternal perspective (*Politics*, 1287a 19-23). Such is the impossible motion that constitutes the “mystical foundation” of law (Derrida, 1990. 947). Derrida describes the mystical foundation of laws as follows:

Here a silence is walled up in the violent structure of the founding act. The “mystical” is an abyss in the heart of what is supposedly well founded: vanished cruelties at the moment of constituting a state, forgotten terror when new law comes into force, events which remain historically “uninterpretable or indecipherable (*ininterprétables ou indéchiffrables*).” (Derrida, 1990. 943)

The common Good and the divine are plagued by the same complication of private versus public perspective. No one person has the privilege of accessing it, it is essentially public which means that it has to be limited and bound to the public use of reason. In fact, on the same grounds, Aristotle prohibits the sovereignty of a monarch. He argues that because all humans have the same essential definition, it makes no sense that one person should govern the rest. Therefore, it is preferable that everyone should obey the law, and the magistrate would merely watch its execution (*Politics*, 1287a19-23).

Nonetheless, this choice amounts to a conservative decision to choose stability over innovation and particularity. Like the anomalies, accidents, or abnormalities in nature, Aristotle goes as far as rejecting all that is not in accordance with *logocentric* laws as bestial.

He therefore that recommends that the law shall govern seems to recommend that God and reason alone shall govern, but he that would have man govern adds a wild animal also; for appetite is like a wild animal, and also passion warps the rule even of the best men. Therefore, the law is wisdom without desire. (*Politics*, 1287a 19-25)

Aristotle does not deny the creative power of individuals which is rooted in their animal desire, but systematically prefers the stability of public reason, even equating it with the laws of the divine.[4]

Gradually and stealthily, the public and the lawful are preferred and are approximated with that which is divine. It is this emphasis on the sovereignty of the laws of wisdom that causes him to compare the individual with the beast. It is worth remembering that the aim of politics and legislation is “the good man” (*NE.*, 1. 1100a 1). The good of the city at this point has elevated to a stage in which alterity and innovation are equal with bestiality.

Nevertheless, it is Aristotle himself who sets out the deconstructive intervention within this logocentric structure precisely when, later in Book V of the *Nicomachean Ethics*, he takes up the challenge to address the individual cases and the unprecedented situations.

The Impasse regarding the Individual

Aristotle claims that universal law came about as a result of one individual’s need to take part in exchange. Yet, as I argued, the moment the neutral law is established, it ironically loses the capacity it is made for: to care for and include individual cases.

Aristotle anticipates the problem at the beginning of Book V when he makes a distinction between justice as law and justice as fairness. There is a curious relationship between the unfair and the unlawful, which he tries to deal with in terms of part and whole. He writes, “unfair and unlawful are not identical but distinct and related to one another as a part is related to a whole” (*NE.* 5.2.1130b 11). He writes that “everything unfair is unlawful, but not everything unlawful is unfair” (*NE.* 5.2.1130b 11). Therefore, fairness is more complete and more encompassing than justice as law, but fairness is also homogeneous with justice as law. He remarks that fairness is part of justice, along with lawfulness.

After this primary proposal, Aristotle returns to the original definition and division above. He expresses his unease with the situation, describing this as an impasse (*aporia*) regarding fairness (*epieikeia*) (*NE.* 5.10 1137b 7). It is crucial to notice that he insists that the nature of fairness is of the same kind (*genos*) as justice, while “the fair thing, ...is better than a certain kind of just thing” (*NE.* 5.10.1137b 8). While he confirms that it is an impasse to justice “according to law,” Aristotle contends that “as an impasse ...it is a

making-straight of what is legally just” (*NE*. 5.10. 1137b 11). He describes the impasse as follows:

The reason is that all law is universal, but there are some things about which it is not possible to *speak (legein)* correctly when *speaking* about them universally. Now, in situations where it is necessary to speak in universal terms but impossible to do so correctly, the law takes the majority of cases, fully realizing in what respect it *misses the mark (hamartia)*. The law itself is nonetheless correct. For the mistake lies neither in the law nor the law giver, but in the nature of the case. (*NE*. 5.10 1137b 12-18, my italics and emphasis)

From this quote, it is evident that the problem is tied to the nature of speaking or “addressing” the abnormal other, a new problem, an individual case, or any unanticipated particular. It seems that the laws as the public speech (*logos*) have lost their ability to address the individuals. There seems to be a discrepancy between the ordinary use of language (*kyrion*) and the idiomatic and personal one (*idion*).

The law and the lawgiver are correct, Aristotle confirms. The *aporia* that makes it impossible is “in the nature of the case.” Of course, this does not invalidate the law with regard to normal cases, but the issue for Aristotle is the just treatment of a new claimant of truth, a completely new case, an alien or foreigner, or the untranslatable other. Such a case questions the foundation of laws.

What is wrong with “the nature of this [*new*] case” (*physei tou pragmatos*), in the quote above, other than being unanticipated by the universal law or the ordinary language (*kyrion*)? Its fault is precisely that it is not normal, it could not be anticipated, and the general law did not apply to it. But it is being considered abnormal and monstrous *only* when the law is enforced. Justice as law violently marginalizes the individual as abnormal and aporetic in nature. It is noteworthy that what is natural as such can be neither normal or benign nor abnormal or monstrous. It is only the laws that begin to make such evaluations. One needs to pay attention to the fact that by being considered out of the law, the abnormal does not turn into an animal. The animal has its place in the hierarchy of natural genera, albeit lower than humans. But this impasse is related to a mistake, a fall, or wrongdoing that one commits without malice or intention nor out of vice. It is associated with the claim of a finite system that aims at schematizing infinite cases.

The economic structure of law, as Aristotle admits, necessarily comes to a halt. He writes, “there are cases which it is not possible to cover in a general statement” (*NE.*, 5.10. 1137b 17). The local currency cannot measure the novel issue anymore. We are not in the order of the house (*oiko-nomos*) but the realm of the unhomely and unfamiliar.

The eternal natural laws give the natural world an anticipatable future, a future that is traceable from the present. Like natural laws, justice as the law works in the economy of the present in which the future should “for the most part” resemble the past or be traceable through analogy. Now, the momentary suspension of it opens the economic structure of time towards an unanticipated event. Through the breakdown in the system of universal laws, for the first time, possibilities are not anticipated and potencies (*dynamoi*) are in a limitless motion (*energeia ateles*). In short, the consideration of the other as an absolute other irreducible to general laws gives Aristotle’s system an *a-teleological* or deconstructive force and a new form of time that can bring about the becoming of justice. For a moment, the structure of presence collapses, and difference, with its full force, begins to create the possibility of a call for justice. However, as I show below, Aristotle does not follow this nomadic path and does his best to subsume the other under the same.

On the other hand, I would argue, following Derrida, that justice is in the constant deferral of universal laws or universal decisions. The only real solution to keep the force of justice active is to experience justice as this impasse or impossibility. Derrida says:

I want to insist right away on reserving the possibility of a justice, indeed of a law that not only exceeds or contradicts ‘law’ (*droit*) but also, perhaps, has no relation to law, or maintains such a strange relation to it that it may just as well command the ‘*droit*’ that excludes it. (Derrida, 1990, p. 927)

Thus, the deconstructive intervention is not simply dialectical as for or against any system of thought or law. It is rather an intervention within a present system that questions its premises and its headings. Derrida calls this movement in his early works deferral or *différance*. In defending the integrity of deconstruction, he repeats the same term in his essay, “Force of Law,” and with reference to “the promise of justice.”

For me, it is always a question of differential force, of difference as the difference of force, of force as *différance* (*différance* is a force *différée-différente*), of the relation between force and form, force and signification, performative force, illocutionary or perlocutionary force, of persuasive and rhetorical force, of affirmation by signature, but also and especially of all the paradoxical situations in which the greatest force and the greatest weakness strangely enough exchange places. (Derrida, 1990, p. 929)

By suspending the present and actual structure of justice as law, the *force* of the law, the *différance*, will create the possibility of justice to come. Therefore, it is only by weakening the structure of law and emphasizing the generative force of justice that the laws become open to the *other* of the law, or to the uncalculated. Laws in general and particularly in a political context define the inside and outside of a universal system, what is normal and abnormal, and what is appropriate and inappropriate. Their application always involves some kind of positive or violent force of elimination and delimitation. Deconstruction exposes the marginalization committed by these general laws through revealing their *aporias*. As McCormick (2001) comments, "...the exposing of the *aporias* and the margins of the traditional is an act of resistance and an openness toward the future. The future is a possibility of transcending violence, a possibility already aspired after in the tradition itself" (McCormick, 2001, p. 399).

How are we to understand the *aporias* of the laws in concrete terms? In a political and juridical sense, laws claim to address the rights and merits of others and consequently my own. Especially in theories like that of Aristotle, for whom a city is a place where the function of man is realized, the laws that determine the role of individuals in the city enjoy a particularly ontological character. It is the primary job of a judge or a statesman to recognize the proper character of individuals and their merits.

Notwithstanding, the precarity and the paradoxical foundation of the universal laws come to the fore when one needs to establish a new law, ponders on whether to follow or not follow the laws or how to deal with the otherness (alterity) of the other "before the laws." McCormick (2001) nicely summarizes this precarious moment, as mentioned by Derrida, throughout the same essay as follows:

(1) Judges apply previously established rules, on one hand, yet create law freshly in the moment of decision. As a result, they

conserve yet destroy the law; they function in one way as machines but in another as founders. Legitimacy is threatened because, on one hand, each case is different and should be treated as such, and, on the other, consistency is required to prevent arbitrariness. (2) Derrida emphasizes the undecidable, that which cannot be sublated under a rule or even, for that matter, a prudential decision. It "haunts" not only hard cases but, as if a ghost, even routine cases. Finally, (3) there is the imperative of urgency, the fact that a decision must be rendered now and cannot be put off. Derrida observes that there is a "madness" to this aspect of the decision (Derrida, 1990, p. 23-28). (McCormick, 2001, p. 403)

According to this quote, the decision-maker, the sovereign, or the judge conserves and yet destroys the law. That is to say, the dominant and sovereign character of laws, the fact that they have to act impersonally and automatically, make them conspicuously blind to singular character of individuals. "Automatic application of existing legal doctrines, especially combined with the exclusory aspects of operating within a legal idiom cannot embody just decisions" (Mathews, 2009, p. 33). Therefore, the problem, as Mathews (2009) observes as well, "lies in this conflict between imposed universality and unique circumstance. The law fails to achieve justice if it applies reductive generality without considering the singularity of each case and the requirements these different realities produce" (Mathews, 2009, p. 34). Derrida's distinction between law (*droit*) and justice, justice being the un-deconstructible force of caring for the other, and the laws being inevitable and yet economical, is meant to deal with this precarious situation. Derrida writes: "if I were to apply a just rule without a spirit of justice and without in some way inventing the rule, the example for each case, I might be protected by law (*droit*), my action corresponding to objective law, but I would not be just" [5] (Derrida, 1990, p. 940). While the law is backed by institutional force, justice calls for a critical force of resistance, which results in less violence as it does not effectively make or destroy anything. This force of resistance is not equal to inaction, indifference, or pacifism. It is an invitation to question the foundation of the laws. Patience and indecision put the current forces of action on a creative path other than that which is already made towards the promise of justice to come.

Going back to an earlier quote (p. 9 above), Aristotle talks about the *aporia* of the universal laws as a mishap (*hamartia*). *Hamartia* is the word that is used several times in different forms and derivations

in the *Poetics*, referring to the fatal flaw of a tragic character (*Poetics*, 1455a 15-20). *Hamartia* is an essential flaw or a natural symptom that carries the events away from their anticipated end. I suggest that concerning natural laws and natural motion, *hamartia* is responsible for violating a *hylomorphic* anticipated end. Concerning actions and decisions, *hamartia* carries the rational calculation of a character in a tragedy away from its calculated, anticipated end in happiness. The result of this flaw is the *cata-strophic* end of straying from the course of nature or the universal laws of justice. Consequently, Aristotle implies that some unknown abnormality in the nature of the particular brings about the failure of the universal laws. Like a tragic character, more calculation of the same kind does not change the course of events that are written unbeknownst to the agent. As I show below, Aristotle agrees and admits that it is the indefinite itself that is giving the laws, and the judge or the decision-maker has to grapple the impossible applying a completely different mode of calculation.

Impossible Calculation and Heedful Conduct

By approaching the individual, Aristotle's language becomes enigmatic. He mentions that to go beyond the law is more just than justice itself. He even surpasses this by contending that it is the outlaw that founds the law: "That is why the fair is both just and also better (*beliton*) than just in one sense. It is not better than just in general but better than the mistake due to the generality [of the law]" (*NE*. 5.10.1137b 8). Aristotle expects that at the moment of the creation of a new law or the expansion of a previous law, the new could be subsumed under the general. He hopes that the same kind of calculation will give new laws. He does his best to restore the structure of the present:

In situations in which law speaks universally, but the case at issue happens to fall outside the universal formula, it is correct to rectify the shortcoming... Such a rectification corresponds to what the lawgiver himself would have said if he were *present*, and he would have enacted if he had known [of this particular case]. (*NE*. 5.10.1137b 19-25)

With the words that he uses, it is evident that he is making an extra effort to make the universal *present* again after its legitimacy is dramatically breached. After all, as commentators suggest, some sort of "logical or universal criteria are required for the legislative practice to be a rational enterprise. For this is the only way to make equality

and justice possible” (Contreras, 2013, p. 23). In reality, it was the very operation of the rational calculation that caused the mishap in the first place. This is comparable to asking Oedipus to calculate more to avoid his catastrophic fate, while the calculation of the same kind brought him to that point in the first place.

In the *Rhetoric* (1.13.1374a-1374b24), Aristotle discusses nearly the same situation addressing the laws which miss the mark due to the infiniteness (*aperon*) of cases. His language is fraught with the same ambiguity as he introduces the notion of equity as a supplement to the laws. As many commentators noted, he advises that when coming across novelties or singularities of this kind, the judges should consider the whole and re-establish the law rationally and deliberatively (Contreras, 2013, p. 24; Leyden, 1985, p. 96-7). Aristotle suggests

to look, not to the law but to the legislator; not to the letter of the law but to the intention of the legislator; not to the action itself, but to the moral purpose; not to the part, but to the whole; not to what a man is now, but to what he has been, always or generally. (*Rhetoric*, 1.13.1374b 17-18)

In the above quote, Aristotle tries to re-establish and re-affirm the integrity of the law by supplementing it. He looks for the presence of a solid measure in “the intention of the legislator” or a “moral purpose” only to finally contend that what the man is at that moment should be judged by what he has always been. Now, to say that one should consider “not what a person is now” can be a very charitable strategy, but it is also an admission to the impossibility of knowing the individual in its singular and indefinite character in the context at hand. He admits as much by saying: “for where a thing is indefinite, [perhaps accidental or by chance] the rule by which it is measured is also indefinite” (*NE*. 5.10 1137b 20-33). However, it is in this very indecision and admission of the indefinite nature of the particular that Aristotle acknowledges an *a-teleological* moment or a paradoxically indefinite measure. Aristotle implies that “the indefinite” (*aoriston*, meaning limitless) is the condition of the possibility of any definite solution. It is worth remembering that the laws were to “address” the essence (*ousia*) of such private experiences (*hetōn praktōn hylē*). The indefinite matter of action (*praktōn hylē*), like the potential material (*hylē* as *dynamis*) in the *Physics*, which is supposed to be headed towards being-at-work (*entelecheia*), here in action (*praxis*), appears

as a potency whose end (*telos*) is still indefinite or without a proper being-at-work (*entelecheia*).

Aristotle's solution is to create a measure for the indefinite mold by adapting the law at the same time (Contreras, 2013, p. 22).[6] He tries to re-establish the correctness, if not logically, at least strategically, although he is preoccupied with the exceptional cases of tragic figures. Contreras, among others, asserts that Aristotle is still asking for more laws. In other words, according to Contreras, the corrections do not have to lay the foundation of indecision or paralysis. I agree with him on that. However, I also think that there are indications in the text that Aristotle himself is still not satisfied with these calculations.

For my part, I do not believe that Aristotle's laws, even when they are developed *phronetically*, will include the otherness of the other.[7] I highlighted the movement in the text where Aristotle's speech (*logos*) gradually gets carried away by his own admission of the *aporia*. One can see that the nature of the laws, which is supposed to be just, needs to transform from a purely logocentric one. Aristotle does not intentionally and theoretically follow that route, but his language points in that direction and lays its foundation. For example, he offers a new measure whose character and categories are given by the indefinite. This is especially evident in the paradigm that he offers right after mentioning "the indefinite measure" to clarify what he means. Discussing the leaden rule used in Lesbian construction work, Aristotle states that "just as this rule is not rigid but shifts with the contour of the stone, so a decree is adapted to a given situation" (*NE*. 5.10 1137b 20-33). The reference is to the Lesbian molding that had an undulating curve. The leaden rule, as explained by Stewart in the footnotes, was a "flexible piece of lead that was accommodated to the irregular surface of a stone already laid in position, and then applied to other stones with the view of selecting one of them with irregularities which would fit most closely into those of the stone already laid" (Stewart, 1892, p. 531). Here is the paradoxical moment where justice is in pondering alongside the outlaw.

How are we to understand this space of suspense and interruption? According to Derrida, the interruption of decision is not an a-moral nor an unethical moment. Quite the contrary, it is a moment of the creation of justice, but in paradoxical or contradictory terms. "More just than justice," in Aristotle's terms, lacks proper criteria of

calculation. I suggest, following Derrida, that such a “misrecognition” results in a “mistreatment” of otherness. This is not a simple mistake or error but a sign of that which is symptomatic of a surplus or an outlaw, which is more just than justice itself (Derrida & Ferris, 2007, p. 6).

Aristotle continues, “It is now *plain* what the equitable is, and that it is just, and that it is superior to one sort of justice” (*NE*. 5.10. 1138a, my underline). What he thinks is now “plain” about equity does not seem to be pointing to the same kind of calculation as justice and constitutes the nature of a different kind of “calculation” and law. Aristotle is conceding, in effect, that it is not always through a calculation of practical wisdom (*phronēsis*) but through a miscalculation of the universal laws that a state of affairs is created involuntarily. This miscalculation is what he called *hamartia* or “missing the mark.”

Upon the collapse of the universal law and justice as law (*droit*), equity emerges in honoring the singular as singular. The law exists as undecided or indefinite, given by the *aporia* itself. However, the moment a law or judgment is passed, it takes the form of injustice rather than justice. As Aristotle writes: “A man is fair/equitable who chooses and performs acts of this sort, who is no stickler for just in bad sense, but is satisfied with less than his share, even though when he has the law on his side” (*NE*. 5.10. 1137b35-1138a2). He is readily admitting that to do justice is to not abide strictly (i.e., justly) to the law and to be satisfied with injustice, namely “less than one’s share,” even if the decree says otherwise. This is where Aristotle concedes to an alternative mode of being-with and hints at the fact that it might even be superior (*kritton*) to the written word of justice (*nomikondikaion*). Notwithstanding, his own miscalculation and *hamartia* have already set out a motion that is no longer *teleological*. In effect, the force of justice has overcome this paralyzing melancholia before the impossibility of doing justice through the laws. I believe that the implication is that any decision (to act or not to act) that is made should acknowledge the impossibility of laws and the promise of justice.

Law is the element of calculation, and it is just that law exists, but justice should be experienced as incalculable. Justice requires one to calculate and reckon with the incalculable. The *aporetic* experience of justice is this experience, which is as improbable as it is necessary. According to Derrida, these *aporetic* moments in decision-making are

the ones in which the decision between just and unjust is never insured by a rule (Derrida, 1990, p. 940).

Justice, at this moment, calls for a supplement beyond justice as laws and beyond calculation. It calls for a surplus of excess that paradoxically restores justice. Being responsible and ethical in this sense will be beyond the confines of the lawful and will amount to being disproportionate:

Transformations, indeed juridico-political revolutions take place—cannot be motivated, cannot find its movement and its impulse (an impulse which itself cannot be suspended) except in the demand for an increase in or supplement to justice, and so in the experience of an inadequate or an incalculable disproportion (Derrida, 1990, p. 957).

Paradoxically, then, to be just, one is necessarily disproportionate and unjust, and that is why justice can only be experienced in its impossibility. In order to be responsible with respect to the other, “rather than seeking conformity, one may have to set oneself apart from what is publicly or commonly accepted” (Derrida, 1995, p. 26). One’s freedom emerges as a result of a *heretical* stance against what is inherited from tradition or the public.

This is the very meaning of ethics and responsibility for Derrida. An action becomes genuinely one’s own when it is not in conformity with the system of intelligibility or the laws. Paradoxically it has to be irresponsible, outlawed, and unjust with regard to the inherited. In other words, genuine responsibility is tied here to *heresy* in all the senses of the term: “departure from a doctrine, difference within and difference from the officially and publicly stated doctrine and the institutional community that is governed by it” (Derrida, 1995, p. 26).

Such is the paradoxical and impossible character of laws in relation to justice. Authentic being-in-following the laws is the perpetual experience of this trouble and *aporia* of alterity.[8] That which is the most authentic expression of humans or the most responsible and ethical mode of conduct is necessarily and paradoxically the most heretical and unlawful.

Scholars like Contreras are accurate in believing that Aristotle thinks that equity is rational (if not logical at least axiological), or “the congruence of the value with the purpose of the [original] legislator and a restoration of justice as fairness” (Contreras, 2013, p. 23). But, my contention, following Derrida, is that the force of justice has already carried away Aristotle’s *logos* towards a level of creation

beyond deliberation. There emerges another kind of justice that cannot be supplemented by the same measures. In addressing otherness as such, as Aristotle admits, one is dealing with a new case that is unanticipated and thus outside the established juridico-political paradigm. The new judgment emerges as a supplement, which will necessarily not correspond to the definition of the just as we know it. This judgment is basically without a measure. The person who is making the decision is, at this point, at the brink of generating a new making, one that is akin to the work of poets rather than judges who act like machines.

The merit of Aristotle's discussion of laws and justice is that in the dawn of Western philosophy, he lays the ontological foundation for both justice as laws and the promise of a new kind of justice. Aristotle explains the force of justice behind inevitable laws and reveals the ever-transcending promise of fairness. Meanwhile, in the interest of establishing universal laws, he sets forth on the course of philosophy and prefers the former stable system, through which he misses the mark.

Conclusion

In this paper, I examined how the deconstructive critique of the laws in Aristotle can reveal both their genesis and their limitations. The significance of the Aristotelian ontology of law is the internal dialectic that is in progress within his analysis. He puts on trial his own suggestions and formulations out of which he lays bare the genesis of his thought process, alongside alternative modes of thinking altogether.

Aristotle's political and moral laws are not a departure from nature but are part of his more general schemata that explain generation and motion in nature. According to Heidegger, for Aristotle, things (*ousia*) in nature (*physis*) seek their completion and end (*teleology*) and fulfill their definition (*horismos*) by molding and informing their underlying potential material (*hylē*), hence hylomorphism. Through this network of concepts and associating the end (*telos*) of motion with how things look in an everyday context (*eidōs*), Aristotle gives an account of creation in nature "for the most part." There is a sense in which the motion (*kinēsis*) and generation in nature "for the most part" generates *the same*, in spite of the differences and accidents (*tychai*). There is a

limit to the change and motion that is determined by the way things are in their familiarity and availability. The *heading* or *telos* is already anticipatable, otherwise, it would be accidental and unaccountable (*alogon*).

In the realm of action, and regarding human events, communities, and judgment, justice as laws is supposed to act as a form that brings individuals to happiness. Yet, in this essay, I showed that the contingencies with respect to individuals haunt his universal principles. I attempted to show that his text is bifurcated between two kinds of being-with, whose excellence is justice. Both of these compartments towards otherness are intrinsic to the natural growth of humans towards their flourishing in being-with-others-in-*polis*.

The first kind can be seen when Aristotle tries to explain the immanent constitution of a city whose function is to bring the original character of citizens to the fore. He gradually replaces the good of every individual with the good of the city, and as a result, the laws turn a blind eye to the singularity of individuals. In such a circumstance, the second moment of the genesis of community and law comes to pass, when in confronting a novel case, justice as universal law becomes impossible. Aristotle tries to rectify justice as law with more justice of the same genus. He assumes that at the moment of the creation of law, practical wisdom (*phronēsis*), the intellectual virtue which is responsible for applying the universal laws to a particular context, would go beyond both nature and convention—and in one stroke founds both of them (*NE.*, 1144b14–17).

Nonetheless, my argument here is that by admitting the impossibility that afflicts his metaphysical system, Aristotle hints at a path beyond his own solutions: the path of “nomadic following” and the heedful conduct. The laws of “nomadic following” are not based on the same calculation as rational deliberation but are given by the indefinite material at hand. They are only realized if one takes the potency (*dynamis*) of the indefinite matter or singular case seriously. Following this path allows the laws to move beyond the calculation of *logos* and provides an ability to hear the voice of the “other.” This does not mean that the laws cannot establish some form of justice. Instead, it means that the general laws are blind to the most original case which founds them in the first place. We need a new measure to apply to that which is indefinite. This measure needs to be given by the indefinite or the singular other, which is not similarly reduced

(*NE*. 5.10 1137b 20-33). Aristotle calls this second more complete form of justice “fairness” (*epieikeia*).

Aristotle admits to the *aporia* of laws, and the failure of partial justice in “addressing” itself to the singular other transforms the nature of fairness (*epieikeia*) into a completely different mode of being-with-others. As he initially puts forth, fairness turns into or transforms into something other than a mere supplement or rectification of justice (*NE*. 5.10.1137b 19-25). The rectification of the law, which is necessarily unjust, is paradoxically the most responsible comportment towards the other. Finally, justice at the limits of the laws consists in following the laws creatively or deconstructively without a predetermined end and by perpetual heedfulness toward the alterity of the other.



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Notes

- [1] This is confirmed by Heidegger's translation of individual being in Aristotle, which is aligned with how a thing appears in its "look" in public rather than the genuine occurrence of difference. The individual being (*hekaston*) in its private presencing is translated by Heidegger as *das Geeinzelte*. Brogan explains that this choice of the term in German is not very common and emphasizes the prefix *Ge-* which indicates a gathering or community (Brogan, 2005, p. 84). Altogether, it seems that Heidegger would like to underline that what is considered individual is essentially connected to what is common (*koinon*) and public, indicating that *hylē* needs to be understood as headed towards being in common with other individual beings (Brogan, 84). *Hylomorph* is headed towards appropriation, a kind of having and being proper in *eidos* and *logos* which is public as well as private
- [2] Aristotle maintains that people use justice (*dikaionês*) in a perfect sense to refer to the human ability to knowingly choose the best and the noblest (*kalon*) action in every individual context and in a partial sense as a social virtue, the one which holds the community together in the most excellent fashion (*NE.*, 1129b 26-27).
- [3] The most general force of "ought" or moral force towards the golden mean is the same as the one involved in choosing the golden mean of virtues and just action towards others in public. Virtues hold an essential relationship to the beautiful, noble (*kalon*), and proportionate. Virtues are defined, as Joe Sachs writes in his commentary, as "the most beautiful (*kalon*)." The force of justice in the most general sense is also the force of the "ought" behind all virtues aiming at the most beautiful making or doing. Aristotle mentions that "it orders one to do the deeds" (*NE.* 5.1.1129 b20). In this sense, it acts as the form of all virtues. All virtues aim at the golden mean, which is both the most beautiful and the most proportionate. To define beauty as proportionate implies that parts are regarded in relation to a whole. Action is most beautiful when it plays its proper role in the organic structure of the whole city. In other words, justice in the most general sense is the same as other virtues "conceived from a different point of view" (Stewart, 401). In this sense, justice should rather be called "the virtue of "righteousness" or of "moral Justice" a virtue displayed towards others, a social virtue (Chroust & Osborn, 129-130). Anton-Hermann Chroust & David L. Osborn, "Aristotle's Conception of Justice," *Notre Dame L. Rev.* 129 (1942) "Virtue is the state conceived simply as a state; Justice is a

state conceived as putting its possessor in a certain relation to society” (Stewart, 401).

- [4] The very equation of individual with bestial reminds us of his claims in the *Physics* and *Metaphysics* about the indeterminacy of the material and desire, which needs to be controlled and brought under the reign of *logos*.
- [5] Elsewhere in the paper, Derrida reiterates almost the same complexity: “If the act simply consists on applying a rule, of enacting a program or effecting a calculation, we might say that it conforms to law and perhaps by metaphor, that is just, but we would be wrong to say that the decision was just.”
- [6] Contreras’s citation on this page has a typo. Or he has “missed the mark” and referred to a text that is actually in the *Nicomachean Ethics* while he claims it to be in the *Rhetoric*.
- [7] This was the case with Trott’s formulation of progress in Aristotle’s city as well. The universal measure to apply to individual cases and pass judgments for Trott was a homogeneous *logos* which is used deliberatively and *phronetically*. But what I tried to show here is the gradual modification of the very nature of measure or *logos*.
- [8] It is noteworthy that *aporia*, as the term suggests, is a blind alley; hence, a non-experience. That is, the very statement “experience of an *aporia*” is paradoxical. This is because the experience seeks a passage to the other or to its object which, in this case, is blocked and hampered. That is why, for Derrida, every genuine reading or understanding of the other is finally the experience of an impossibility a non-experience. What one claims or hopes to be a just and genuine understanding of the other is after all a translation and every translation is a transformation that falls short of expressing the character of the other.