

TÒ DÍKAION: PHYSIOGNOMIES OF ETHICAL, LEGAL, AND POLITICAL JUSTICE IN ARISTOTLE

*TÒ DÍKAION: FISIONOMIAS DA JUSTIÇA ÉTICA, JURÍDICA
E POLÍTICA EM ARISTÓTELES*

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equity [*epieikeia*], and artisanal skill [*kheirotekhnē*] in the configuration of a justice that harmonizes the ethical, juridical, and political spheres, with the just as proportional, mediational, and equitable rightness as its gravitational center.

Keywords: Aristotle. Justice. Prudence. Equity. Politics. Practical philosophy.

Resumo

O presente artigo propõe uma leitura de Aristóteles como antecedente a partir do qual a capacidade para exprimir o justo [*to dikaion*] e o injusto [*to adikon*] marca o limiar onde a experiência política se entrelaça com a dimensão ética e jurídica. Através de três camadas de análise – o justo-justiça no campo ético, o justo-ajustado na esfera judicativo-normativa e o justo-justeza no domínio político – procura-se demonstrar como a filosofia prática aristotélica articula prudência [*phronesis*], equidade [*epieikeia*] e habilidade artesanal [*kheirotekhnē*] na configuração de uma justiça que harmoniza as esferas ética, jurídica e política, tendo como ponto gravítico o justo como justeza proporcional, mediacional e equitativa.

Palavras-chave: Aristóteles. Justiça. Prudência. Equidade. Política. Filosofia prática.

Introduction

Let us return to the timeless era of the Iliad, to the passage where Homer narrates how, after Patroclus loses his original armor, the god Hephaestus, at the intercession of Thetis, forges a new set of arms for Achilles considering the final confrontation with the Trojans. In the ekphrasis in question, we are presented with a detailed description¹ of the images that, layer by layer, adorn the new shield of the illustrious warrior, starting from the center of the artifact: the Earth, the sky and the sea, the Moon and the constellations; a field to be cultivated; a royal estate in full grain harvest; a vineyard with workers harvesting it; a herd where the dominant bull is attacked by a pair of wild lions, which the shepherd and his dogs try to frighten away; a farm with flocks of sheep; an enclosure where young boys and girls dance joyfully in a circle; and, at the extreme edge, the great Ocean enveloping all these scenes in a riverine embrace.

I have deliberately left until the end one of those iconic descriptions – the representation, in the bard’s words, of “two beautiful cities full of people”²: in one of them, the Greek hero’s shield shows a besieging army, an ambush, and a deadly battle³; in the other, a wedding, various celebrations, and a judicial dispute resolved according to law⁴.

I linger, for a moment, on this latter scene: in the light of the figurative staging that surrounds it, it is not difficult to perceive how Homer’s ekphrasis already incorporates the awareness of a certain notion of justice, as if depicting the inverted symmetry between the utmost cohesion, choreographed in the marital union, and the utmost disintegration, staged in the belligerent confrontation.

We then turned our attention to Hesiod and let us dwell in two passages on one of the epic productions of his work, *Works and Days*, specifically in the First and Second Invocation to Perses, with the background of the dispute between two brothers. These brothers are at odds over the division of a paternal inheritance, but the scales are tipped in favor of one party by a sentence preceded by bribery:

O Perses [...] do not turn away from work to attend lawsuits [...] <and> the speeches of the public square. In truth, lawsuits and speeches matter little (30) to one who does not have a plentiful sustenance reserved, harvested at the right time [...]. Once they are satisfied, you could promote lawsuits and

¹Cf. HOMERUS, *Ilias*, XVIII, 478-608.

²*Ibid.*, 490.

³Cf. *Ibid.*, 509-540.

⁴Cf. *Ibid.*, 490 ss.

disputes over other people's property. Yet you will not be able to act that way a second time; therefore, let us decide without further ado our own dispute (35) with just judgments, those that come from Zeus, the best. In fact, we had already divided the inheritance and you, nevertheless, seized many other things and took them [...] to the devourers of gifts, who are ready to give the verdict. [...] O Perses, hear Justice and do not increase the excess. Excess is a bane for a poor mortal, and even the noble cannot bear it easily, but it is crushed by its weight (215) when confronted with Deviations. Another and better path leads to the just, for, in the end, justice surpasses excess [...].⁵

Let us now travel to Athens, a good couple of centuries later, where the figure of Solon stands out, an eminent legislator and statesman and author of a poem called *Eunomia*, i.e., Good Order. From it I highlight a handful of verses that, with some boldness, we could transpose to our time under the title "A Silent Pandemic":

Our city [...] will not perish [...] by the will of the blessed immortal gods. It is the citizens themselves, with their madness, who want to destroy the great city, [...] and also the unjust mind of the people's leaders. For all of them, because of their great excess, many sufferings are prepared, for they do not know how to curb excess, [...] but they enrich themselves, persuaded by unjust actions, [...] given over to the plunder of goods, both sacred and public, one here, another there, yet another over there... Some and others do not preserve the venerable foundations of Justice which, in silence, knows the present and the past and which, with time, even if late, always arrives to punish. This inevitable wound already spreads throughout the entire city and quickly brings it down into painful servitude, awakening civil revolt and the sleeping war. [...] Thus a Public Illness assails each one in his own home and now the courtyard gates cannot stop it, always ending up finding whoever it may, even the one who thinks he can take refuge in the recess of his own room.⁶

⁵ ὦ Πέρση, σὺ δὲ ταῦτα τεῶ ἐνικάτθεο θυμῷ, μηδὲ σ' Ἔρις κακόχαρτος ἀπ' ἔργου θυμὸν ἐρύκοι νείκε' ὀπιπεύοντ' ἀγορῆς ἐπακουδὸν ἔοντα. ὥρη γάρ τ' ὀλίγη πέλεται νεικέων τ' ἀγορέων τε, ᾧτινι μὴ βίος ἔνδον ἐπηετανὸς κατὰκειται ὥραϊος, τὸν γαῖα φέρει, Δημήτερος ἀκτὴν. τοῦ κε κορεσσάμενος νείκεα καὶ δῆριν ὀφέλλοις κτήμασ' ἐπ' ἀλλοτρίοις: σοὶ δ' οὐκέτι δεύτερον ἔσται ᾧδ' ἔρδειν: ἀλλ' αὖθι διακρινώμεθα νείκος ἰθείησι δίκῃς, αἱ τ' ἐκ Διὸς εἰσιν ἄρισται. ἤδη μὲν γὰρ κλῆρον ἐδασάμεθ', ἀλλὰ τὰ πολλὰ ἀρπάζων ἐφόρεις μέγα κυδαίνων βασιλῆας δωροφάγους, οἱ τήνδε δίκην ἐθέλουσι δίκασσαι. [...] ὦ Πέρση, σὺ δ' ἄκουε δίκης, μηδ' ὕβριν ὀφελλε: ὕβρις γάρ τε κακὴ δειλῷ βροτῷ: οὐδὲ μὲν ἐσθλὸς ρηϊδίως φερέμεν δύναται, βαρῦθει δέ θ' ὑπ' αὐτῆς ἐγκύρσας ἄτησιν: ὁδὸς δ' ἐτέρηφι παρελθεῖν κρείσσων ἐς τὰ δίκαια: Δίκη δ' ὑπὲρ ὕβριος ἴσχει ἐς τέλος ἐξελθοῦσα. HESIODUS, *Opera et Dies*, 27-40; 213-218, in HESIODI: *Theogonia, Opera et Dies, Scutum, Fragmenta Selecta*, ed. R. Merkelbach – M. L. West, Oxford: Oxford University Press, 1970; vide FERREIRA José Ribeiro, «Ética da justiça e do trabalho em Hesíodo», in *Máthesis* 13 (2004) 199-207.

⁶ Ἡμετέρα δὲ πόλις κατὰ μὲν Διὸς οὔποτ' ὀλεῖται αἴσαν καὶ μακάρων θεῶν φρένας ἀθανάτων · [...]

Let us move forward another century, this time to the city of Megara. There, a poet named Theognis composes a disturbing elegy that, without hesitation, we would title “The Tyrant Lurks...”:

This City is pregnant, and I fear it will give birth to a man who will straighten our malicious insolence. The citizens are still sensible, but the rulers are flip-floppers and have fallen into total depravity.

Noble men [...] have not yet destroyed any city!

But when insolence pleases the base folk, and when they annihilate the people and hand down judgments in favor of the unjust for their own benefit and power, do not expect that, for long, this city [...] will lie in the greatest tranquility. When it pleases the vile men that these things happen, [...] that is where rebellions, kin-slaying murders, and tyrants arise.⁷

What deep connection links the epic vein of Homer and Hesiod to the elegiac fiber of Solon and Theognis?

Polis is a human creation whose sustainability depends on a fragile balance. To preserve it, the City must be ceaselessly defended against the continual threats of erosion and collapse. When the City falls ill, the cause does not stem from a punitive vengeance of the gods, but from man’s sole responsibility. Typically, the reasons that lead to a community’s ruin are not exogenous and foreign, but endogenous and often all too familiar; they arise from neglect, from the inability to care for what is common, from within.

In Solon’s poem, the idea that law corresponds to a just ordering of the world rests on the supposition that, even if delayed, Justice [*dike*] always ultimately

ἄστοι βούλονται χρήμασι πειθόμενοι, δῆμον θ’ ἡγεμόνων ἄδικος νόος, οἷσιν ἐτοῖμον ὕβριος ἐκ μεγάλης ἄλγεα πολλὰ παθεῖν · [...] πλουτοῦσιν δ’ ἀδικοῖς ἔργμασι πειθόμενοι [...] οὐθ’ ἱερῶν κτεάνων οὔτε τι δημοσίων φειδόμενοι κλέπτουσιν ἀφαρπαγῇ ἄλλοθεν ἄλλος, οὐδὲ φυλάσσονται σεμνὰ Δίκης θέμεθλα, ἣ σιγῶσα σύνοιδε τὰ γιγνόμενα πρό τ’ ἐόντα, τῷ δὲ χρόνῳ πάντως ἦλθ’ ἀποτεισομένη. τοῦτ’ ἤδη πάσῃ πόλει ἔρχεται ἔλκος ἄφικτον, ἐς δὲ κακὴν ταχέως ἤλυθε δουλοσύνην, ἣ στάσιν ἔμφυλον πόλεμόν θ’ εὖδοντ’ ἐπεγείρει, [...] οὕτω δημοσίον κακὸν ἔρχεται οἴκαδ’ ἐκάστω, αὐλαιοὶ δ’ ἔτ’ ἔχειν οὐκ ἐθέλουσι θύραι, ὑψηλὸν δ’ ὑπὲρ ἔρκος ὑπέρθορεν, εὔρε δὲ πάντως, εἰ καὶ τις φεύγων ἐν μυχῶ ἢ θαλάμῳ. SOLON, *Eunomia*, frgm. 3, 1-29 in *Poetarum elegiacorum Graecorum testimonia et fragmenta*, vol. I (2nd ed.), eds. Bruno Gentili – Carlo Prato, Leipzig: BSB, 1988.

⁷ κύει πόλις ἦδε, δέδοικα δὲ μὴ τέκη ἄνδρα εὐθυντῆρα κακῆς ὕβριος ἡμετέρης. ἄστοι μὲν γὰρ ἔθ’ οἶδε σαόφρονες, ἡγεμόνες δὲ τετράφαται πολλὴν ἐς κακότητα πεσεῖν. Οὐδεμίαν πω, Κύρν’, ἀγαθοὶ πόλιν ἄλυσαν ἄνδρες· ἀλλ’ ὅταν ὑβρίζειν τοῖσι κακοῖσιν ἄδη, δημόν τε φθείρωσι, δίκας τ’ ἀδικοῖσι διδῶσιν οἰκείων κερδέων εἵνεκα καὶ κράτεος, ἔλπεο μὴ δηρὸν κείνην πόλιν ἀτρεμεῖσθαι, μηδ’ εἰ νῦν πολλῇ κεῖται ἐν ἡσυχίᾳ, εὐτ’ ἂν τοῖσι κακοῖσι φίλ’ ἀνδράσι ταῦτα γένηται, κέρδεα δημοσίῳ σὺν κακῷ ἐρχόμενα. ἐκ τῶν γὰρ στάσιές τε καὶ ἔμφυλοι φόνοι ἀνδρῶν μούναρχοί θ’ ἂ πόλει μὴ ποτε τῇδε ἄδοι. THEOGNIS, *Elegia* I, 43-52, in *The elegies of Theognis and other elegies included in the Theognidean sylloge*, ed. Thomas Hudson-Williams, G. Bell & sons ltd., 1910.

prevails, restoring the balance compromised by acts of injustice. Solon holds the conviction that, founded on Justice, the Good Cosmic Order (which includes the divine) reverberates in the individual order and, from there, in the social order and vice versa, providing not “things,” “resources,” or “status,” but harmony and cohesion, without which they are not a source of stability and prosperity but of disorder and impoverishment. For this very reason, a political community cannot fail to entail a shared responsibility among its citizens, since caring for what everyone depends on constitutes the only way to prevent the destruction of the polis by Disnomia, i.e., by disorder.⁸

The poem of Theognis, in turn, reinforces and amplifies Solon's.⁹ Its underlying message is relentless: the worst scourge is not a god who awakens ill-disposed and intent on inflicting everything we can imagine as the worst upon a human community, but rather the autocratic drive of a tyrant who wants the best for it. Indeed, however divine the leadership qualities of a despot may be, however providential his vision may be, however enchanting his self-glorification and his liturgies of justification and legitimation, what is truly tragic is the excess [*hybris*] of an unlimited power in its intensification and expansion. In truth, we know well that just as tyranny will represent for Plato the most degrading and perverse form of political organization¹⁰, the same will be thought by Aristotle: tyrannical and despotic power carries within itself an inability to aim at the “just measure,” which makes it not episodic but structurally unjust.¹¹

What matters to emphasize, for now, is the way in which, by calibrating the dikê-dikaio-syne relationship, the multifaceted ancient visions of the Polis will find fertile ground in Aristotelian practical philosophy, providing a reflection of variable complexion where justice, rightness, and the proper harmonize the ethical, legal, and political spheres, with “the just” [*to dikaion*] as the gravitational center.

To that end, Paul Ricoeur, a profound scholar of Aristotle, offers a decisive passage in his work *The Just or the Essence of Justice*, which reads as follows:

The question of attributing an action to someone (...) answers the question of who <is its author>? (...) This power of intervention is presupposed by the ethical-legal concept of imputation, essential for the attribution of rights and duties. (...) There is a mutually implicative link between self-esteem and the

⁸Vide LEÃO Delfim, *Sólon. Ética e Política*, Lisboa: FCG, 2001, 415-431.

⁹Cf. NAGY Gregory, “Theognis and Megara: A Poet's Vision of His City”, in T. J. Figueira – G. Nagy (eds.), *Theognis of Megara. Poetry and the Polis*, Baltimore/London: The Johns Hopkins University Press, 1985, 22-81.

¹⁰Cf. PLAT., *R.*, VIII, 562a – 580c.

¹¹Cf. ARIST., *Pol.*, V, 11, 1313a 34 ss.

ethical evaluation of our actions that aim at the ‘good life’ (in the Aristotelian sense), just as there is a link between self-respect and the moral evaluation of those same actions subjected to the test of universalizing the maxims of action (in the Kantian sense). Together, self-esteem and self-respect define the ethical and moral dimension of the self, insofar as they characterize the human being as a subject of ethical-legal imputation. What does the subject lack (...) to be a true subject of law? He lacks the conditions for the actualization of his capacities. Indeed, these require the continuous mediation of interpersonal forms of otherness and institutional forms of association in order to become real powers to which real rights will correspond. (...) Before we draw the consequences of this statement for political philosophy and the philosophy of law, we must (...) focus (...) on the relationship with a third party, (...) <because> only the relationship with a third party, situated in the background of the relationship with the ‘you’, provides a basis for the institutional mediation required by the constitution of a real subject of law – that is, a citizen.¹²

It is worth emphasizing that, for Ricoeur, this entire frame of reference is anticipated and summoned, at a deeper ontological level, by the exclamation “**It is unjust!**” The visceral feeling of injustice in the face of the destructive eruption of an evil either suffered or witnessed precedes the rational definition of what it means to be just and, in this sense, precedes any theory of justice. Moreover, Ricoeur had already alerted us of this in the opening lines of the Preface to the aforementioned work, recalling in a confessional tone: “It is intentional that, when evoking childhood memories, I speak of injustice before justice – as, incidentally, Plato and Aristotle often do, in a visibly intentional way. Our first entry into the dimension of law was marked by the cry ‘It is unjust!’”¹³

Fundamentally, it is to follow the Ricoeurian observation that I intend to present Aristotle as a predecessor from whom the capacity to express **the just** [*to dikaion*] and **the unjust** [*to adikon*] marks the threshold where political experience intertwines with the ethical and juridical dimensions.

¹²RICOEUR Paul, *O justo ou a essência da justiça* [*Idem, Le Juste*, Paris: Esprit, 1995], trad. Vasco Casimiro, Lisboa: Instituto Piaget, 1997 [reimpr. D.L. 2015] 26-20.

¹³*Ibid.*, 10.

1. The just-justice in the ethical domain

In this first layer of analysis, it is about perceiving to what extent acting with **prudence** [*phronesis*] is projected as an appropriation of an attributive justice.

According to the Stagirite, the capacity to act virtuously, aiming at the just mean of a dispositional possibility, will only make sense to the extent that the agent becomes master [*kyrios*], progenitor [*teknopoietes*], and creator [*demiourgos*]¹⁴ of his own actions and *ipso facto* responsible for their respective consequences; otherwise, ethical disposition [*éthike hexis*] will never house a virtuous character [*êthos*]. The sequential process of forming an ethical character is well known: 1. we acquire good habits to become dispositionally virtuous; 2. we become properly self-virtuous to perform voluntary acts in view of autonomy; 3. we autonomously perform voluntary acts in order to choices; and 4. we exercise the elective faculty to reach a decision-making model whose practical rationality is attested in the act of deliberation.¹⁵ Now, according to Aristotle, recourse to the relational experience of injustice [*adikia*] constitutes the typological basis of the Aristotelian argument from which he seeks to formalize the link between the elective and desiderative faculties through the orthological mediation of deliberation. Indeed, it is not enough for the agent to want or desire to be just for it to follow that he only “in-voluntarily” becomes “unjust”: any injustice committed will always be voluntary by virtue of the fact that the text of an action is narrated in it, which, in failing to heed (through negligence or omission) the rational “appeal” of the perception of the just mean [*to meson*] and of the just measure [*metriotes*]¹⁶, obliterates in the agent the deliberate desire to choose the feasible and appropriate means for performing just acts. An especially illustrative passage in this regard is the step in which the Stagirite remarks:

It makes no sense that the one who practices injustice does not intend to be unjust, or that one who acts with intemperate intemperance. If someone acts without ignorance of what makes him unjust, he will be unjust voluntarily: and it is not by aspiring to this that he will cease to be unjust and become just, for the sick is not cured in that way. And if he were to fall ill voluntarily by living without control and by disobeying [= not heeding] the physicians,

¹⁴Cf. ARIST., *Eth. Nic.*, III, 5, 1113b 18; vide LEBEDEV Andreas, “Pater – Demiourgos – Basileus” [I: Synonymia of metaphorical codes in ancient Greek philosophical cosmogonical texts; II: The linguistic and mythological substrate of Aristotle’s theory of “four causes”], in *Balcano-Balto-Slavica. Symposium on Textual Structure: preliminary materials and theses*, ed. Vyacheslav IVANOV – Tatjana CIV’JAN, Moscow: Institute of Slavic and Balkan Studies of the Russian Academy of Sciences, 1979, 24-29.

¹⁵Cf. ARIST., *Eth. Nic.*, I, 5, 1095b 15 – 1096a 11; *Eth. Eud.*, 1,4, 1215a 32 – b 6.

¹⁶Cf. *Idem.*, *Eth. Nic.*, II, 2, 1104a 11-20.

then it would still have been possible for him not to fall ill, but having been negligent, it no longer [is possible], just as in the case of someone who throws a stone and can no longer stop it, although both throwing it and keeping it in his hand were within his reach, because the principle [of the act] lay within itself.¹⁷

The analogy of medical art that Aristotle employs polarizes ethics around the virtuous cultivation of practical wisdom, habitually translated as **prudence** [*phronesis*]¹⁸, whose exercise is manifested in the modeling of the formal universality of a norm or law onto the material singularity of a concrete and particular situation in decision-making contexts of high critical density. The **prudent man** [*phronimos*] represents, so to speak, the living paradigm, the incarnate rule, of a mediational capacity to link the universal to the particular, whatever the domain of human activity¹⁹, since his action shows how it is possible to discern the opportune moment and the proper measure of each act, to assess the most suitable means according to the rightly aimed ends, to mobilize the most effective resources according to the expected effects, and, finally, to answer for the resulting consequences.

Up to this point, nothing new. However, the attempt to grasp the full reach of justice in its multiple variables must confront a difficulty: specifying which conception of reason [*logos*] underlies the rectitude [*orthotes*] of a just virtuous action, in order to differentiate it from an action performed merely “correctly.” Indeed, it is in this aporetic context that the Aristotelian defense of the prudent man acquires utmost relevance. Bearing an ethical disposition put to the test, the “prudent” – like an upright man [*spoudaios*] – makes visible and legible in his action the text of a living rule, of a lived criterion²⁰: it is therefore not a matter of “learning from him” what virtue is, through a teaching of essential definitions, causal explanations, or abstract theories; rather, it is a matter of “looking at him” to “see how he did it”. If we do not wish to become hostages to a morality we bring home or, worse, to a moralism more interested in prescribing to others what we ourselves are incapable of achieving, virtue must become ours through autonomous and internalized appro-

¹⁷ ἄλογον τὸν ἀδικοῦντα μὴ βούλεσθαι ἄδικον εἶναι ἢ τὸν ἀκολασταίνοντα ἀκόλαστον. εἰ δὲ μὴ ἀγνοῶν τις πράττει ἐξ ὧν ἔσται ἄδικος, ἐκὼν ἄδικος ἂν εἴη, οὐ μὴν ἂν γε βούληται, ἄδικος ὧν παύσεται καὶ ἔσται δίκαιος. οὐδὲ γὰρ ὁ νοσῶν ὑγίης. καὶ εἰ οὕτως ἔτυχεν, ἐκὼν νοσεῖ, ἀκρατῶς βιοτεύων καὶ ἀπειθῶν τοῖς ἰατροῖς, τότε μὲν οὖν ἐξῆν αὐτῷ μὴ νοσεῖν, προεμένῳ δ' οὐκ ἐτι, ὥσπερ οὐδ' ἀφέντι λίθον ἔτ' αὐτὸν δυνατὸν ἀναλαβεῖν· ἀλλ' ὅμως ἐπ' αὐτῷ τὸ βαλεῖν [καὶ ρίψαι]· ἡ γὰρ ἀρχὴ ἐν αὐτῷ. ARIST., *Eth. Nic.*, III, 5, 1114a 12-19.

¹⁸ *Ibid.*, VI, 5, 1140a 24; 1141b 23; *Eth. Eud.*, 1,4, 1215a 33.

¹⁹ Vide ZINGANO Marco, “Particularismo e universalismo na ética aristotélica”, in *Idem*, *Estudos de Ética Antiga*, São Paulo: Discurso Editorial, 2007, 129.

²⁰ Cf. ARIST., *Eth. Nic.*, III, 4, 1113a 29-33.

priation, not through automated and externalist reaction. It is thanks to this first attributive, self-imputable dimension that the just is metabolized in each individual act of justice.

What truly appears innovative in Aristotle is that this kind of modelling of the virtue of justice is carried out not through the rigid and linear measure of a ruler, a formula, or a code, but through the mediation of a living criterion whose normativity is shaped and molded in the discourse “of” and “in” the action of the prudent individual.²¹ It is therefore no surprise that, in the youthful dialogue *Protrepticus*, the reader is immediately confronted with the question “what criterion (i.e., rule; norm) ... could be more exact for us than the prudent man?”²² The question, obviously, already contains the provocative trigger for the answer.

Proceeding on our odyssey, it is important, from this point onward, to probe how far Aristotelian theorizing expands its interpretive possibilities by proposing a kind of analogical continuum between the figure of the prudent, taken as an ethical paradigm of the capacity to deliberate in a critical situation²³, and the figure of the legislator, taken as a legal paradigm of the capacity to shape adaptable universal laws to the indeterminacy of particular cases.

2. The just-adjusted in the judicial-normative sphere

In this second layer of analysis, the aim is to determine to what extent conduct guided by **equity** [*epieikeia*] is established as an applicable decision of restitutive and/or retributive justice.

The question that now arises may be condensed as follows: how is one to be just, applying justice in an adjusted way? The idea of a modelling of the universal and necessary form of normativity within the particular and contingent matter of situations finds its precedent in a lengthy textual excursus in Book V of the *Nicomachean Ethics*, where Aristotle clearly admits that

Just and equitable are the same, and although both are noble, the equitable is superior [i.e. better; more excellent]. What produces [...] difficulty is that the equitable, despite being just, is not so according to the law, but as a

²¹Cf. AUBENQUE Pierre, *La prudence chez Aristote*, Paris: PUF, 1997, specifically “L’homme de la prudence: §2 la norme”, 41-51.

²²ARIST., *Prt.*, frgm. 52 Rose.

²³Cf. ZINGANO Marco, “Notas sobre a deliberação em Aristóteles”, in *Estudos de Ética Antiga*, São Paulo: Discurso Editorial, 2007, 213-214.

correction of what is legally just. And the cause of this is that every law is universal, with some cases in which, even so, there is no way to prescribe the universal with rectitude (...). But this does not make <impl. the law> any less correct: indeed, the failure [i.e. the lack of correctness] is neither in the law nor in the legislator, but belongs to the nature of the cases, for such <impl. fallibility> constitutes the matter of practical things. In this sense, whenever a universal law is prescribed and something occurs in nonconformity with the universal, (...) it appears correct to rectify the deviation, something the legislator himself would have prescribed, had he witnessed it, or legislated, had he become aware of it. This is the reason why <impl. the equitable> is [...] better [...] not in relation to the just in an absolute sense, but rather in relation to the failure in the absolute mode <of prescribing>. Such is the nature of the equitable: a correction of the law in that which it fails due to its universality.²⁴

So this means, then, that the creation of laws, within the legislative art, does not in itself guarantee the criterion of their normative applicability.²⁵ Consequently, such applicability cannot occur “blindly” in a symmetrically uniform manner (in juridically sanctioning or retributive terms), nor “arithmetically” in a leveling and

²⁴ ταὐτὸν ἄρα δίκαιον καὶ ἐπεικὲς, καὶ ἀμφοῖν σπουδαῖον ὄντων κρεῖττον τὸ ἐπεικὲς. ποιεῖ δὲ τὴν ἀπορίαν ὅτι τὸ ἐπεικὲς δίκαιον μὲν ἐστίν, οὐ τὸ κατὰ νόμον δέ, ἀλλ’ ἐπανόρθωμα νομίμου δικαίου. αἴτιον δ’ ὅτι ὁ μὲν νόμος καθόλου πᾶς, περὶ ἐνίων δ’ οὐχ οἷόν τε ὀρθῶς εἰπεῖν καθόλου. (...) καὶ ἐστὶν οὐδὲν ἥττον ὀρθός· τὸ γὰρ ἀμάρτημα οὐκ ἐν τῷ νόμῳ οὐδ’ ἐν τῷ νομοθέτῃ ἀλλ’ ἐν τῇ φύσει τοῦ πράγματός ἐστιν· εὐθὺς γὰρ τοιαύτη ἡ τῶν πρακτῶν ὕλη ἐστίν. ὅταν οὖν λέγῃ μὲν ὁ νόμος καθόλου, συμβῇ δ’ ἐπὶ τούτου παρὰ τὸ καθόλου, τότε ὀρθῶς ἔχει (...) ἐπανορθοῦν τὸ ἐλλειφθέν, ὃ κἂν ὁ νομοθέτης αὐτὸς ἂν εἶπεν ἐκεῖ παρών, καὶ εἰ ᾗδει, ἐνομοθέτησεν. διὸ δίκαιον μὲν ἐστὶ, καὶ βέλτιόν τινος δικαίου, οὐ τοῦ ἀπλῶς δὲ ἀλλὰ τοῦ διὰ τὸ ἀπλῶς ἀμαρτήματος. καὶ ἐστὶν αὕτη ἡ φύσις ἡ τοῦ ἐπεικοῦς, ἐπανόρθωμα νόμου, ᾗ ἐλλείπει διὰ τὸ καθόλου. ARIST., *Eth. Nic.*, V, 10, 1137b 10-27; with regard to the dual dimension of justice —legal and equitable— and the articulation of the juridical dimension of distributive and retributive compensation with the ethical dimension of equity [epieikeia], vide HANNA Marta, “La doctrina de la equidad en Aristóteles”, in *Sapientia* 56 (2001) 210, 379-396; CACHIA Jean, *Éthique à Nicomaque, Livre V (1-10): la justice. Aristote*, Paris: Ellipses, 1998; DESPOTOPOULOS Constantin, “Les concepts de juste et de justice selon Aristote”, *Archives de Philosophie du Droit* (Paris) 14 (1969) 283-308; DRAGO Giovanni, *La giustizia e le giustizie. Letture del libro quinto dell’“Etica a Nicomaco”*, Milano: Marzorati, 1963; GIULIANI Alessandro, *La definizione aristotelica della giustizia. Metodo dialettico e analisi del linguaggio normativo*, Perugia: Università degli Studi – Edizione Universitarie, 1985; MORAUX Paul, *À la recherche de l’Aristote perdu. Le dialogue sur la justice*, Louvain: Publications Universitaires de Louvain, 1957; TORDESILLAS Alonso, “Équité et kaironomie”, in CORDERO Nestor (dir.), *Ontologie et dialogue. Mélanges en hommage à Pierre Aubenque*, Paris: PUF, 2000, 149-169; Von LEYDEN Wolfgang, *Aristotle on Equality and Justice. His Political Argument*, London: Macmillan – School of Economics, 1985.

²⁵ Vide ANTONAKOPOULOS Antonis, “La théorie du droit chez Aristote”, in *Revue Hellénique de Droit International* 29 (1976) 173-192; DESPOTOPOULOS Constantin, “Le raisonnement juridique d’après Aristote”, in *Archives de Philosophie du Droit* (Paris) 17 (1972) 89-97; MARTIN de VILLODRES Isabel, *Las notas de lo jurídico en el pensamiento aristotélico*, Madrid: Piramide, 1999.

egalitarian way (in socially contributive and distributive terms), but rather in a measured and relational manner, through a **justice** [*dike*] of **proportion** [*kat'analogia*]²⁶, exercised with **equity** [*epieikeia*]²⁷, based not on what is necessarily exact [akribes] but on what is **appropriate** [*prepon*]²⁸. According to the Stagirite, this means that the perception of the symbolic and evaluative contents that shape a common, shared idea of justice is sustained by the notion that legislative production resembles a manufacture whose execution requires a peculiar *poietic capacity*.²⁹ In this sense, the “making” of the law and its corresponding applicability arise from a bipolar process between the “prescriptive form” of a “universal law” and the “adventitious matter” of a “particular case,” a bipolarity that can be overcome only through mediation between the normative form of the law and the empirical matter of the case.³⁰ Both the creation of a norm (e.g., in a legislative context) and its corresponding decisional applicability (e.g., in a judicial assessment context³¹) appear sustainable only in the light of a **poietic conception of justice**, whose prudential nature³² Aristotle metaphorically links to the *hand of a craftsman* capa-

²⁶Cf. ARIST., *Eth. Nic.*, II, 6, 1106a 26 – 1106b 16.

²⁷Cf. *Ibid.*, V, 10, 1137a 31 – 1138a 3.

²⁸Cf. *Ibid.*, X, 8, 1178a 10.

²⁹At times, the structuring of the decision-making act tends to blur, within Aristotelian practical philosophy, a rigid demarcation and division between action [*praxis*] and production/creation [*poiesis*], opening a mediational threshold in which ethical action operates under the sign of a hylomorphic shaping, a tangential approximation to the domain of poietic creation: vide BROADIE Sarah, “Nature and craft in Aristotelian teleology”, in *Biologie, logique et métaphysique chez Aristote*, Paris: Éditions du CNRS, 1990, 389-405; *Idem*, “Nature, craft and *phronesis* in Aristotle”, in *Philosophical Topics* 15 (1987) 2, 35-50; COULOUBARITSIS Lambros, “La signification philosophique de la *poiesis* aristotélécienne”, in *Diotima* 9 (1981) 94-100; McINERNEY Ralph, “La importancia de la Poética para entender la Ética aristotélica”, in *Anuario Filosófico* 20 (1987) 2, 85-94; ANGIER Thomas, *Aristotle's Ethics and the Crafts: A Critique*, Toronto: T-Space at The University of Toronto Libraries, 2009; BALABAN Oded, “*Praxis* and *poiesis* in Aristotle's practical philosophy”, in *The Journal of Value Inquiry* 24 (1990) 3, 185-198; CAMBIANO Giuseppe, “La *tekhne* dans l'Éthique à Nicomaque”, in *L'excellence de la vie*, Paris: Vrin (2002) 161-177; WALLACE James, “Ethics and the Craft Analogy”, in *Midwest Studies in Philosophy XIII*, Notre Dame: University of Notre Dame Press, 1988, 222-232.

³⁰Following the argument advanced by Arthur Kaufmann in his *Philosophy of Law*, it is in this mediational capacity to represent simultaneously the form of the law (in the idealization of its abstract universality) and the matter of the case (in the actualization of its concrete particularity) that the *tertium* appears capable of shaping «the “meaning” in which the idea of law or legal norm and the life situation are placed in immediate reciprocal correspondence,’ thereby becoming ‘the methodological locus of the connection (“correspondence”) between reality and value (...)’, precisely insofar as it ensures that ‘mediation between material justice and normative justice with which all juridical knowledge is concerned». KAUFMANN Arthur, *Filosofia do Direito*, trad. António CORTÊS, Lisboa: Calouste Gulbenkian, 2004, 187-188.

³¹This means that the subject of legal interpretation «does not merely “subsume” the case under the law while remaining completely on the margins of this process, but rather plays an active, formative role in the so-called “application of the law». *Ibid.*, 68.

³²According to John Wall, «contemporary Aristotelian perspectives on *phronesis* illustrate (...) strategies for distinguishing it from, even while in successively deeper ways relating it to, the inventive, making, creative activity of poetics. (...) Despite these important possible qualifications

ble of shaping the abstract figure of a certain form in the concrete perception of a given material. As strange as this manufacturing analogy may seem in this context, Aristotle is perfectly clear and unequivocal on the matter:

Just as artisans, for example the weaver or a shipbuilder, need material that is suitable for their work (and it will necessarily be far more beautiful when created with art), so too the politician and the legislator must have appropriate material and the proper conditions in order to act.³³

We will see, in the final layer of this analysis, in what terms the hylomorphic connection between matter [*hyle*] and form [*morphe*] occurs.

Let us for now restrict our attention to the Aristotelian analysis of prudential deliberation (which we examined in the first layer), specifically concerning the problematization – so current yet complex – of the relationship between, on the one hand, the act of legislating in accordance with the prevailing political regime (the object of analysis in the final part of this study), and, on the other hand, the act of adjudicating in conformity with the underlying legal order. We will focus on the latter, since, for the Stagirite thinker, the challenge lies in trying to understand the constant dialectical feedback between upstream legislative production and downstream normative application. Indeed, this might suggest at first glance that legal language should, in the name of a supposed objectivity, be absolutely exact, univocal, and one-dimensional, operating only on a purely formal and categorical plane. No one would dare question that an abstract general concept allows an object to be defined through the classification of a set of closed and univocal “characteristics.” However, at an overly strict level of abstract conceptuality, only numerical concepts would meet the formal requirement of pure univocity, which would be unfeasible concerning legal-juridical concepts: although their genesis exhibits and demands the form of a generalization, the fact is that the effectiveness of their applicability depends on a type of conceptualization that neither “defines” nor “classifies” the reality of a phenomenon, but rather “describes” and “typifies” it in a sufficiently generic and analogical way to be perceived, understood, and interpreted as such.

on Aristotle’s distinction, however, none of these perspectives seriously entertains the possibility – which would question Aristotle’s distinction fundamentally – that *phronesis* may be poetic in itself». WALL John, «*Phronesis, Poetics and Moral Creativity*», in *Ethical Theory and Moral Practice*, 6 (2003) 2, 323 ss.; the position upheld by the author is preceded by a broader study with greater historical scope in *Idem*, «*Phronesis as Poetic: Moral Creativity in Contemporary Aristotelianism*», in *Review of Metaphysics*, 59 (1995) 2, 313-331.

³³ ὥσπερ γὰρ καὶ τοῖς ἄλλοις δημιουργοῖς, οἷον ὑφάντη καὶ ναπηγῶ, δεῖ τὴν ὕλην ὑπάρχειν ἐπιτηδεῖαν οὕσαν πρὸς τὴν ἐργασίαν, οὕτω καὶ τῷ πολιτικῷ καὶ τῷ νομοθέτῃ δεῖ τὴν οἰκείαν ὕλην ὑπάρχειν ἐπιτηδεῖως ἔχουσαν. ARIST., *Pol.*, VII, 4, 1325b 40 – 1326a 4.

The regulatory and normative force of a law [*nomos*] depends not only on the conditions in which it is formally conceived within its universal scope or categorically imposed by its prescriptive and coercive power, but also on the way under which the political – i.e., relational – conditions of its immediate applicability to the contingent nature and the indeterminate flow of situations are materially produced.³⁴ It is from this relational and situational horizon that the legal, judicial, and judicatory need for a prudent mediation arises, within which one can equitably exercise³⁵ the critical act of adjudication [*krisis*] whether by an arbitrator [*krites* = *diaitetes*] who must resolve a dispute between diametrically opposed parties, or by a judge [*krites* = *dikastes*] who must decide on the illegality to be inferred and the sentence to be rendered. What is surprising is that, in this specific context, Aristotle does not conceive legislative production [*nomothesia*], necessary to judicial activity, as entirely detached from the creation of decrees [*psephismata*] stemming from political action. In either case, what Aristotle emphasizes is the persistence of a **skill** [*deinotes*]³⁶ required both of the deliberator, in order to decide prudently in accordance with the right reason [*orthos logos*]³⁷, and of the legislator or decreer, in order to deliberate on the time

³⁴Cf. AUBENQUE Pierre, “La loi selon Aristote”, in *Archives de Philosophie du Droit* 25 (1980) 147-157.

³⁵In this regard, Arthur Kaufmann notes that «Aristotle reflected on the relationship between justice and equity, and did so with great precision. Equity is presented as “justice in the concrete case.” In practice, it plays a non-negligible role». KAUFMANN Arthur, *Filosofia do Direito*, op. cit., 225.

³⁶Marcel Detienne e Jean-Pierre Vernant argue that «il n'est pas contestable que, pour Aristote, le modèle du prudent, du *phronimos*, est le politique, l'homme (...) dont l'action tendue vers un fin doit toujours tenir compte de l'opportunité et connaître qu'elle s'exerce dans un domaine où rien n'est jamais stable. Mais il n'est pas moins vrai, que l'analyse aristotélécienne s'inquiète de distinguer la prudence, la *phronesis*, de l'habileté, de la *deinotes*, en montrant que celle-là ne se réduit ni à l'intuition, ni à la justesse de coup d'oeil, mais qu'elle est une espèce d'habileté fondé sur la “délibération en vue d'un bien” (*euboulia*)». DETIENNE Marcel – VERNANT Jean-Pierre, *Les ruses de l'intelligence. La mêtis des grecs*, Paris: Flammarion, 2002, 305.

³⁷Thomas Aquinas perfectly captures the Aristotelian correlation between manual skill, prudential mediation, and right reason. On the one hand, right reason must possess the capacity to determine the mean of each virtue based on the poietic analogy of an artisan's use of a rule: «In the moral virtues, as in other cases —for example, artifacts— there exists something like a standard toward which the one who possesses right reason looks (...) by means of which the mean is grasped, that is, how one ought to determine the mean of each virtue. For this reason, we say that such measures are a kind of mean (...) according to right reason, this standard being for the virtuous person what the rule is for the artisan, namely, that which is fitting and appropriate.» [In virtutibus moralibus, sicut et in aliis rebus, puta in artificialibus, est aliquid quasi signum ad quod respicit ille qui habet rectam rationem (...) et considerat per hoc signum *quis est terminus medietatum*, idest quomodo debeat determinari medietas in unaquaque virtute, quas quidem medietates dicimus esse quoddam medium (...) secundum rationem rectam. Hoc autem signum quod est virtuoso sicut regula artificis, est id quod decet et convenit]: SANCTI THOMAE DE AQUINO *Opera omnia iussu Leonis XIII P. M. edita, t. 47: Commentaria in Aristotelem. Sententia libri Ethicorum*, Ad Sanctae Sabinae, Romae, 1969 (ed. René-Antoine GAUTHIER), Liber 6, Lectio 1 (EN, VI, 1, 1138b 18 – 1139a 15) Notae 1-2. On the other hand, it is not enough to know a common or general principle in order to act virtuously if that knowledge is not made explicit in

and manner of producing a particular law and ensure its consequent applicability.

3. The just-rightness in the political domain

In this third and final layer of analysis, it is about understanding in what sense acting with **artisanal skill** [*kheirotekhnē*] translate into manufacture of a contributive and distributive justice.

If there is a term that has acquired status and conceptual weight thanks to Aristotle's philosophical impetus, it is "politics." From the outset, the designation *Politika* – whose etymological root points to what concerns the *polis*, i.e., the city – provides support and a title to the treatise in which the Stagirite consolidates a systematic investigation into questions, problems, and matters related to the most excellent way of organizing human life in community. Moreover, the thread that intertwines and unifies the various books and paragraphs of the work reveals the philosopher's commitment to the search for just ways of life: these can only be achieved within the horizon of a political community [*koinonia politike*]³⁸ equipped with procedures, structures, forms of government, and factions, which sometimes cooperate and sometimes clash in their interests, based on what each considers "just."³⁹

Based on this assumption, Aristotle undertakes a kind of mapping of the political sphere, bringing together two coextensive dimensions: on the one hand, a formal and constitutive dimension, on the basis of which a regime [*politeia*] is instituted that orders and regulates the distribution and recognition of the multiple powers at play; on the other hand, a pragmatic and teleological dimension, on the basis of which well-being, understood as the good life [*eu zen*] or happiness [*eudaimonia*]⁴⁰, is pursued not in the solitary, individualistic enclave of private interests [*idia sympheron*] but in terms of the general interest or common good [*koinon sym-*

a prudential way: «One who merely adheres to what is common (= universal) does not, for that reason, know better what to do in order to act. It is as if, to someone asking what should be done to heal a body, one were to reply that he should give what the art of medicine prescribes and what those who possess that art —namely, physicians— prescribe. Even so, the one who asks would not know what he should give to the patient. In this way, the right reason of prudence is found in the moral domain, just as the right reason of art is found in the artifacts produced.» [Solum ille qui hoc commune habet, non propter hoc sciet amplius procedere ad operandum. Puta si quaerenti qualia oportet dari ad sanandum corpus, aliquis responderet quod illa debent dari quae praecipit ars medicinae et ille qui habet hanc artem, scilicet medicus; non propter hoc interrogans sciret quid deberet dare infirmo. Sic autem se habet ratio recta prudentiae in moralibus, sicut recta ratio artis in artificialibus]: *Ibid.*, *op. cit.*, Nota 3.

³⁸Cf. ARIST., *Eth. Nic.*, V, 1, 1129b 19; VIII, 9, 1160a 9 ss.; *Pol.*, I, 1, 1252a 24 – 1253a 35.

³⁹Cf. *Idem*, *Pol.*, III, 9, 1280a 7-31.

⁴⁰Cf. *Ibid.*, 1280a 32.

pheron].⁴¹ While the first dimension points to the realization of what is just [*to dikaion*] within the framework of a citizenship [*politeia*]; the second, in turn, consolidates itself in the bonds of civic friendship [*politike philia*]⁴² that should link the relational trust among citizens [*politeis*] and the body of political office-holders [*politeuma*].⁴³ The latter, in turn, is structured both on a “vertical” plane, given the need for government and direction, and on a “horizontal” plane, given the freedom of cooperation and association, very close to that creative sense of civil society, whose historical precedent materialized in ancient Greece in these remote ancestors of future “political parties” called *hetairiai*, civic associations where citizens gathered privately to discuss freely, spontaneously, and informally matters of common interest.⁴⁴

Now, according to Aristotle, such a communal aim cannot be achieved without the contribution of philosophical reflection to grasp the meaning of virtue, law, and, as one might expect, justice. If, on the one hand, justice [*dikaiosyne*] is the virtue proper to the exercise of citizenship [*politeia*], on the other hand, the perception of what is just [*to dikaion*] confers upon the community of citizens not only a law-making capacity to order the political sphere, but also a discerning capacity to adjudicate in an equitable and fair manner, in accordance with the spirit of the law, which is why no political regime can subsist without a regulating legal body [*nomothesia*] and without an ordering constitutional body [*politeia*]. Moreover, the law, underlying both spheres, must prevail in all matters of common interest, although its production and its transposition to particular cases respectively depend on the intervention of legislators [*nomothetai*] and the action of rulers [*arkhontes*].⁴⁵

Now, what Aristotle designates as political philosophy [*politike philosophia*] rests on a conception grounded in the well-known principle that man is a “zoon politikon,” i.e., a “political living being.” In one of the most celebrated passages of the *Politics*, Aristotle states:

Man is by nature a political living being (...), and the reason (...) is obvious: (...) only man, among all living beings, possesses speech. Thus, while the voice indicates pleasure or pain, (...) discourse, on the other hand, serves to express the useful and the harmful and, consequently, the just and the unjust. (...) Indeed, it is the community of these <experiences> that produces the

⁴¹Cf. *Ibid.*, 1284b 6-7.

⁴²Cf. *Idem*, *Eth. Nic.*, VIII, 1, 1155a 22; *Pol.*, II, 4, 1262b 7.

⁴³Cf. *Idem*, *Pol.*, III, 6, 1278b 10.

⁴⁴Cf. *Ibid.*, II, 11, 1272b 34.

⁴⁵*Ibid.*, 12, 1273b 33 ss.

family and the city.⁴⁶

The Aristotelian polis therefore arises, at the full limit of its self-sufficiency, to guarantee not merely a life understood as mere survival but, beyond that, a good life; it is only in this qualitative addition that man truly attains the good life, because, by enabling the satisfaction of basic and essential needs, the city also allows him to develop his sociability, providing a public space in which to debate justice and to decide justly about what is of the “common interest.” It is precisely at this threshold, where the just [*to dikaion*] and the unjust [*to adikon*] intersect, that the difficult balance between contributory and distributive justice is on play, within the framework of political regimes in which each community freely expresses itself based on a given legal-constitutional order.

Considering the supreme end of the polis – namely, the articulation between well-being and the common good – Aristotle proposes six possible forms of government, whose quality, good or bad, is defined respectively by the pursuit of the common interest or the pursuit of private interest. Thus, regarding the rule of one (the case of monarchies), the good/right form of royalty (based on good birth, consent, and beneficence) opposes the bad/deviant form of tyranny (based on arbitrariness, violence, and fear); in the rule of a few (the case of oligarchies), the good/right form of aristocracy (based on virtue, merit, and excellence) contrasts with the bad/deviant form of plutocracy (based on inequality stemming from an excessively wealthy minority); concerning the rule of many (the case of poliarchies), the good/right form of the *politeia*, that is, the constitutional regime (based on the primacy of law, the relevance of the middle classes, and governmental stability) opposes the bad/deviant form of democracy (based on equality resulting from an excessively poor majority).⁴⁷ Of all these, the preferable regime, being the best possible, is the *politeia* or constitutional regime. It is a “mixed” constitution – since it combines the proper potentials of regal or aristocratic regimes – or also a “median” constitution – because it aims at a middle ground in the face of the extreme deviations of both plutocratic and democratic regimes – constituting a kind of “mesocracy” where the middle classes govern in the interest of the common good and on the basis of the sovereignty of law. Indeed, just as for Aristotle the mean represents the ethical optimisation of

⁴⁶ὁ ἄνθρωπος φύσει πολιτικὸν ζῷον. (...) λόγον δὲ μόνον ἄνθρωπος ἔχει τῶν ζῴων· ἡ μὲν οὖν φωνὴ τοῦ λυπηροῦ καὶ ἡδέος ἐστὶ σημεῖον, (...) ὁ δὲ λόγος ἐπὶ τῷ δηλοῦν ἐστὶ τὸ συμφέρον καὶ τὸ βλαβερὸν, ὥστε καὶ τὸ δίκαιον καὶ τὸ ἄδικον· (...) ἡ δὲ τούτων κοινωνία ποιεῖ οἰκίαν καὶ πόλιν. ARIST., *Pol.*, I, 2, 1253a 7-18; vide AMARAL António, «A realização discursiva do *vivente político por natureza* na filosofia prática de Aristóteles», in *Idem*, *PRAKTON. Discursividades da ação em Aristóteles*, Editora LabCom.IFP, 2019, 94-106.

⁴⁷Cf. ARIST., *Pol.*, III, 7, 1279a 22 ss.

virtue, so too does the city favour the predominance of the middle element.

It is better that citizens be individuals who are neither excessively poor nor overly rich, for the best city is one that relies on a moderate element and, consequently, possesses a moderating capacity: in fact, the citizens of “mixed” and “middle” regimes – who are less prone to conflicts between factions with opposing and irreconcilable expectations about what each considers “just” – are more amenable to being better governed and to governing better. This is why cities with a higher prevalence of the middle classes are, in the long run, far more stable and sustainable than all the others.⁴⁸

On the other hand, no individual possesses an acquired right to govern another indefinitely, and if citizenship requires participation in government, then each citizen must at times govern and at times be governed. Political power is only viable and sustainable if it is shared in successive alternation among citizens who, under the primacy of law and the cultivation of moderation, are equally free while governed and freely equal when they become governors.⁴⁹ According to Aristotle, the combination of this principle of alternation with the model of contributive-distributive justice concerning property reveals a new and unexpected visage of the just – the visage of social justice; the passage is highly significant: “property should not be common, as some have said [underst. Plato], but in practice it should be made, as among friends, for common use, and that no citizen lacks food.”⁵⁰ Little-read, this passage gives Aristotle’s political thought an atmosphere very similar to what today would be called “demoliberal,” anticipating, to some extent, one of the programmatic markers of democratic socialism, social democracies, and Christian democracies that emerged in the post-war twentieth century.

For all the reasons already set out, this combination of organic justice and social justice finds shelter in Aristotle’s choice of Pericles as the incarnate paradigm of prudence.⁵¹ Thus, the entrance onto the scene, by Aristotle, of the illustrious Athenian statesman is far from innocuous: he constitutes the paradigm and the interpretive key to access the broader sense of a political justice that, intertwined with ethical prudence and legal equity, conceives the just as “rightness.” The circumstances in which a political action is exercised – whether deliberative, evaluative, or executive – reveal a proportional, mediational, and equitable “rightness”⁵² not

⁴⁸Cf. *Ibid.*, 1279a 39; 16, 1287b 4; V, 8, 1309b 19.

⁴⁹Cf. *Ibid.*, I, 12, 1259b 5.

⁵⁰ἐπειδὴ οὔτε κοινὴν φαμεν εἶναι δεῖν τὴν κτῆσιν ὥσπερ τινὲς εἰρήκασιν, ἀλλὰ τῇ χρήσει φιλικῶς γινομένη κοινήν, οὐτ’ ἀπορεῖν οὐθέννα τῶν πολιτῶν τροφῆς. ARIST., *Pol.*, VII, 10, 1329b 42 – 1330a 2.

⁵¹*Idem*, *Eth. Nic.*, VI, 5, 1140b 8-11.

⁵²According to Arthur Kaufmann, the aporetic relationship between justice and equality appears

comparable to the “linear rigidity” of a scientific measurement, but to the “flexible rigor” of a fit adjusted to the contours of contingency, akin to that unusual adaptive measuring device that Aristotle associates with the famous lead ruler of the architects of Lesbos.⁵³ It now appears perfectly justified the reason why Aristotle regards the prudential exercise of justice as a manufactural task appropriate both for administrators [*oikonomikoi*] and for politicians [*politikoi*].⁵⁴ The thesis can be drawn, not from the *Politics* treatise as one might expect, but from an illuminating passage in chapter 8 of Book VI of the *Nicomachean Ethics*, where the Greek philosopher unequivocally states that

Prudence belongs to the practical order: in this sense, one must possess both kinds of knowledge [underst. as universal and particular], especially the latter [underst. as particular], requiring, for this case, a certain architectural grounding [= guiding = regulating]. Now, prudence and politics are the same disposition, although their essence is not the same. Concerning political prudence, one thing is the “legislative prudence,” in its architectural quality; another thing is the [underst. prudence] commonly called “politics,” as it relates to the particular. It is this latter that presents itself as practical and deliberative, given that the decree is the practical domain taken to the extreme [underst. as deliberation on the particular]. That is why we call these

to be surmountable thanks to the Aristotelian conception of the just as “rightness” and of justice as “that which is adjusted”: «it is not numerical equality that is decisively relevant in this case, but rather proportional and relational equality. The equal is a mean, he says, a middle term between excess and deficiency. And since the equal is something intermediate, law too is something intermediate and, therefore, something proportional. For Aristotle, the decisive form of justice is distributive justice as proportional equality in the treatment of a plurality of persons: the distribution of rights and duties according to a criterion of merit, capacity, need... Distributive justice is, in other words, the principle *suum cuique tribuere*. It is the primordial form of justice». KAUFMANN Arthur, *Filosofia do Direito*, trad. António CORTÊS, Lisboa: Calouste Gulbenkian, 2004, 225-240; along the same lines —although from the broader perspective of political theory— José Adelino Maltez argues that «justice, since Aristotle and Thomas Aquinas, is not concerned only with what each owes to another, according to the arithmetic and horizontal proportion of contractualism. For in this kind of justice, which deals with things that are exchanged, one need only equate performance with counter-performance. Since it does not take into account the qualities of the persons involved in the exchange, it can only compare the value of the things that are traded. Justice as a whole also concerns distributive justice and general or social justice. It concerns, first of all, the descending relations from the whole to its respective participants, that is, the relation of the global society to each of its members, namely what is called distributive justice». MALTEZ José A., *Princípios de Ciência Política. Introdução à Teoria Política*, Lisboa: ISCSP, 1996, 176.

⁵³Cf. ARIST., *Eth. Nic.*, V, 10, 1137b 30-31; the remarkable device to which Aristotle explicitly refers is culturally associated with the engineers and architects of Lesbos devoted to the art of construction: it is, in fact, a measuring tool whose capacity to operate within a threshold of “controlled deformation” displays a clear advantage over the limitations arising from the rigidity of conventional rulers, ensuring measurements and metric calculations adaptively adjusted to the irregularity of the surfaces of the materials handled, without, however, losing metric precision: vide LUCAS John, “The Lesbian Rule”, in *Philosophy* 30 (1955) 195-213.

⁵⁴Cf. ARIST., *Eth. Nic.*, VI, 5, 1140b 10-11.

only politicians: only they act in that domain like manual craftsmen.⁵⁵

Conclusion

It is difficult for us, not to say impossible, to avoid bringing Aristotle's theorization of the just and of justice close to that challenge that, through the mouth of Socrates, Plato poses in the *Republic*, inviting the interlocutors of the dialogue to "envision with the mind" [*theasthai logo*] the construction of a city in which justice could be seen put into practice⁵⁶, taking as its starting point the central question of the dialogue, namely "whether the life of the just is better and happier than that of the unjust."⁵⁷ However, while his master is far more committed to providing a (per)formative vision of what reality may become on the eidetic plane, Aristotle, in turn, devotes himself primarily to furnishing a descriptive systematization of what exists and happens, using an expository method that seeks to explain phenomena within the horizon of their occurrence.

Indeed, without the mediation of the just between virtuous justice and an adjusted decision, the ethical, legal, and political inscription of a just action would become unreal and unattainable. In other words, without the "legibility" of the circumstances, the agent will be at the mercy of a "situational illiteracy," preventing the introspective examination of his motivations and the consequential evaluation of his actions, even in those borderline situations where choosing, opting, and deciding means preferring to suffer an injustice rather than commit one.⁵⁸

⁵⁵ ἡ δὲ φρόνησις πρακτική: ὥστε δεῖ ἄμφω ἔχειν, ἢ ταύτην μᾶλλον. εἴη δ' ἂν τις καὶ ἐνταῦθα ἀρχιτεκτονική. ἔστι δὲ καὶ ἡ πολιτική καὶ ἡ φρόνησις ἡ αὐτὴ μὲν ἔστι, τὸ μέντοι εἶναι οὐ ταὐτὸν αὐταῖς. τῆς δὲ περὶ πόλιν ἡ μὲν ὡς ἀρχιτεκτονική φρόνησις νομοθετική, ἡ δὲ ὡς τὰ καθ' ἕκαστα τὸ κοινὸν ἔχει ὄνομα, πολιτική: αὕτη δὲ πρακτική καὶ βουλευτική: τὸ γὰρ ψήφισμα πρακτὸν ὡς τὸ ἔσχατον. διὸ πολιτεύεσθαι τούτους μόνον λέγουσιν: μόνον γὰρ πράττουσιν οὗτοι ὥσπερ οἱ χειροτέχναι. ARIST., *Eth. Nic.*, VI, 7-8, 1141b 21-29.

⁵⁶ Cf. PLAT., *R.*, II 369 a-c.

⁵⁷ εἰ δὲ καὶ ἄμεινον ζῶσιν οἱ δίκαιοι τῶν ἀδίκων καὶ εὐδαιμονέστεροί εἰσιν. PLAT., *R.*, I, 352 d ss.

⁵⁸ Cf. PLAT., *Grg.* 469 c.

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