

ARISTOTLEAN VIRTUE AND CONTEMPORARY PUNISHMENT

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In this modern era of technological advancement, it is easy to forget that only two centuries ago, civilizations of limited resources, living in comparative conditions of impoverishment, essentially facing insurmountable odds; nevertheless, strived to define their sense of morality as well as rationalistic modes for explaining their very existence. However, while the scholars of the ancient contemporary period were producing works of art that would have tremendous influence on what sociologists now refer to as the western civilization, at the time they were produced, the authors were faced (and perhaps influenced by) very chilling and brutal world conditions; consisting of constant war, deadly plagues, and a seemingly endless struggle for survival. Nevertheless, the resilience Aristotle especially, as well as the rest of the generation of Greek philosophers, particularly during the Classical Period of Ancient Greece, shows that the date in time, nor the level of war or peace in society, can discourage scholars from making their own advancements on the subjects of physics, metaphysics, poetry, biology, logic, rhetoric, politics, government, and ethics.

This paper (part I) will examine the applicability of Aristotelian principals to contemporary crime and punishment. Part II is a continuation of this thesis, further delineating Aristotle's works on ethics, specifically covering the enlightenment of character through the development of ethical virtues.

PUNISHMENT AND INCULPABILITY

The concept of inculcation (the theory of charging someone with blame or fault), is the central principal for state punishment in modern criminal law. Issues pertaining to, culpability, the relationship between the mental states of an agent at the time he acts and the judgments of praise or blame that we pass upon him for evil outcomes he brings about have a long and

traceable history.¹ Punishment, being a form of state action, can be stated in one way or another, is one way in which “the state” (or rather certain individual acting under the authority of “the state”) coerces it’s constituents to conform their conduct to the confines of the law.² As punishment is viewed as an intrusive state action, where an individual’s life and liberty rests in the determination of the state, the basic principles of democracy require that the state be impartial and neutral, to the greatest extent possible, with regard to judging its citizens’ chosen ends.³ Theories of justice, for the most part, consist of theories of distributive justice, rather than penal or retributive justice.⁴ In the minds of the best philosophers throughout time, justice has been viewed as the cornerstone of social living and demonstrates the highest comprehension of the virtues. Perhaps this is why Aristotle felt that justice is such an important condition in a “well ordered” social institution that he decided to devote ten compositions on the topic, in the *Nicomachean Ethics*.

In the liberal tradition of democracy, Aristotle appreciates the role of the republic establishing law, and indeed, the rule of law itself.⁵ Setting up the rules governing the citizens of a republic also presents a special concern within the modern community of criminal law theorists.⁶ Criminal law differs from other particular bodies of law in the way that it examines, assesses, and in some instances, condemns the choices individuals make in forming and pursuing their particular visions of the good.⁷ Aristotle champions the distributive theory of justice; he

¹ See, e.g., L.A. Zaibert, *Intentionality, Voluntariness, and Culpability: A Historical-Philosophical Analysis*, 1 *Buff. Crim. L. Rev.* 459, 450 (1998).

² See Markus D. Dubber, *Punishment Between Law and Police* (2006).

³ See, Kyron Huigens, *Virtue and Inculcation*, 108 *Harv. L. Rev.* 1423 (1998); see also Ronald Dworkin, *Liberalism, in a Matter of Principle*, 181, 191 (1985).

⁴ See, Dubber, *Punishment Between Law and Police*.

⁵ See, e.g., Jill Frank, *Aristotle on Constitutionalism and the Rule of Law*, 8 *Buff. Crim. L. Rev.* 37, 39.

⁶ See, Dubber, *Punishment Between Law and Police*.

⁷ See, e.g., Huigens, *Virtue and Inculcation*, 213.

also recognizes that retributive justice has the potential to overreach in the punishing of its constituents.⁸

Although it would be more pleasurable to disregard the questions of legitimating punishment of the constituents of a republic, interfering with liberty interests, such as life and liberty, and perhaps even menacing nature of the statutory threat of punishment, history has shown that the concept of crime and punishment are a permanent function of society.⁹ Some well intentioned political theorists, such as Karl Marx,¹⁰ thought that was possible for a society to evolve into a state of political harmony, where it is possible for all of civilization to live in peace together, where the issues of crime and punishment would be unnecessary topics to deal with.¹¹ Although Marx's notion of a society without crime is certainly a particularly delightful vision in this day and age, it seems more likely that state's punishment for crime is a reality that is here to stay.¹²

As punishment for criminality has permanence in society and the everyday practice of criminal law concerns the entire citizenship of a republic, it is necessary for the law's policy to be understood and supported by the republic's citizens.¹³ Accordingly, the rule of "good law," so understood, is one not only dependent on the rule of good men, but is one that also promotes a political and citizen-based practice of law.¹⁴ To determine what is "good law," many legal commentators both legitimize and critique laws on the basis of moral theory.¹⁵ Not surprisingly,

⁸ See, e.g., Jill Frank, (p40).

⁹ See, Dubber, (p3).

¹⁰ See, Dubber, (p4). (n17)*

¹¹ See, Dubber, (p4).

¹² See, Dubber, (p4).

¹³ See, e.g., Jill Frank, 47

¹⁴ See, e.g., Jill Frank, (p48).

¹⁵ See, Dubber, (p4).

traditional punishment has historically been more closely associated with moral theory, rather than legal, theory.¹⁶ Since the process of legal judgment in cases where an individual faces punishment for their actions primarily involves inquiry of the individual's moral judgment, instead of the individual's legal judgment.¹⁷ This process is essentially provides an order of law in which a society's norms are used as a standard for punishment.¹⁸

As support for this argument, Professor Markus D. Dubber, a distinguished faculty member at the State University of New York at Buffalo, has eloquently articulated a proposition that reflects how the process of judgment in cases of punishment closely resembles that of moral judgment:

The particular norms are different, to be sure, but the process of determining whether they have been violated is much as the same (though empathic role taking, by placing oneself in the shoes of the person subject to judgment), as are the presuppositions for legal (and not just penal legal) and moral accountability.¹⁹

Therefore, in the process of determining moral accountability as a basis for punishment, Aristotle, would suggests that virtue is particularly indicative of moral accountability²⁰ and formulating a society-oriented scheme for punishment, which takes the moral virtues of society at large into consideration, as the basis for the most proper form of punishment.²¹ Aristotle, as well as other ancient philosophers contend that the "way of life of the people,"²² observed by

¹⁶ See, Dubber, (p4).

¹⁷ See, (p4).

¹⁸ See, Dubber, (p4).

¹⁹ See, Dubber, (p4). (n18+19).

²⁰ See, e.g., L.A. Zaibert, *supra*.

²¹ See, Dubber, (p4).

²² See, e.g., Jill Frank, (474).

series of accepted actions of a republic, by repetition and acquiescence, serve as a driving force of forming the laws of a nation.²³ In essence, virtue is judged against our current environment's notion of virtue, where punishment is a dynamic process, variable on the momentary balance of the current state of the sovereign.²⁴

Although I would like to avoid, as much as possible, a political debate regarding how the “greater good” argument (which supposes there is an end, a purpose, a greater good served by a particular activity) either supports or contradicts various aspects of the republican political theory or the current conceptions of democracy, I would however, like to briefly discuss Aristotle's view on how the purpose of law is to promote the greater good of humanity.²⁵ Much like the republic of the United States, Aristotle principals are concerned for the aggregate good of a society's members or the sum of their individual desires and their respective autonomy,²⁶ Aristotle is equally concerned with the common (or “greater good”) of all of humankind.²⁷ However, punishment, which serves the existence of order in society, is also consistent with the greater good theory, in the way it serves to effectuate results and benefits most favorable to the virtuous members of society. According to Aristotle, for an exemplar of good moral character, the influence of law and punishment should not affect their decision making, as a deficiency in moral character can have even more far-reaching effects. In one of Aristotle's quotes one law, he argues that the greater good can be served not only by compliance with the law, but with conformity to virtuous judgment:

Aristotle writes:

²³ See, e.g., Jill Frank, (474).

²⁴ See, Kyron Huigens, *Virtue and Inculcation*, (p218).

²⁵ See, Kyron Huigens, *Virtue and Inculcation*, *supra*.

²⁶ See, Kyron Huigens, *Virtue and Inculcation* (p214); see also Gordon S. Wood, *The Creation of the American Republic, 1776-1787*, at 58 (1969) (Gordon Wood describes the place of the greater good principal in political analysis on revolutionary-era America.

²⁷ *Id.* at 214.

I have gained this by philosophy: that I do without being commanded what others do only from fear of the law

INCULPABILITY

In this current era of crime and punishment, all modern democratic societies all recognize autonomy as the fundamental touchstone of legitimacy.²⁸ Nevertheless, the concept of “inculpation,” which is the central phenomenon of the criminal law,²⁹ judges a person guilty when his chosen ends are considered improper.³⁰ Doctrines of the general part of criminal law,³¹ such as *actus reus* and *mens rea*, are premised on the relations between the mental states of the agent and the evil outcomes he brings about.³² Furthermore, criminal liability is not limited to affirmative acts of misconduct, but just as readily encompasses omissions³³ (Failures to comply with state commands that subjects are under a duty to obey). Therefore, as a preliminary requirement of culpability, inculpation must be founded on a “voluntary” commission of an affirmative act or the omission of a duty.³⁴

In modern substantive law, the rule that criminal liability can not be predicated on ‘involuntary acts’ is consistent with Aristotle’s view of voluntariness and responsibility. This

²⁸ See, Dubber, (p9)

²⁹ See, Kyron Huigens, Virtue and Inculpation, (p181)

³⁰ Id.

³¹ See, Dubber, (10)

³² See, e.g., L.A. Zaibert, (463).

³³ See, Dubber, (p10).

³⁴ See, e.g., L.A. Zaibert, *supra*.

similarity can be observed by Aristotle's articulation on the connection between voluntariness and responsibility.

Aristotle writes:

[Virtue] or excellence is, as we have seen, concerned with emotions and actions. When these are voluntary we receive praise and blame; when involuntary, we are pardoned and sometimes even pitied. Therefore, it is, I dare say, indispensable for a student of virtue to differentiate between voluntary and involuntary actions, and useful also for lawgivers, to help them in meting out honors and punishment.....consequently, virtue or excellence depends on ourselves, and so does vice.³⁵

Furthermore, Aristotle's view of voluntariness and responsibility is in agreement with one of the most basic principals of modern criminal law.³⁶ The Model Penal Code, for example, has stated that "the fundamental predicate of for all criminal responsibility" is that: "A person is not guilty of an offense unless his liability is based on conduct that includes a voluntary act..."³⁷ However, it is important to distinguished the perception of voluntary actions from mental states, since there are instances where intentionally is not concerned with voluntariness.³⁸ For example, suppose that an agent transacts to pick up goods from X's warehouse. However, the agent is misinformed as to the accurate location of X's warehouse and mistakenly enters the property of Y, who then files a cause of action against agent. In this example, we see that even though the agent voluntarily entered Y's property, it was by no means an intentional decision. Therefore, under Aristotelian principals, the agent's action is actually considered to be "involuntary" due to his ignorance of the facts. Forcible compulsion and other forms of unethical influence on an agent to perform a particular act can also negate the voluntary nature of the action. Therefore, to reiterate this distinctive point, it can be said that when there is an

³⁵ See, Kyron Huigens, *Virtue and Criminal Negligence*, *Buff. Crim.. L. Rev.* 431, 454 (1998) (Note53).

³⁶ See, e.g., L.A. Zaibert, (p491) (Note54).

³⁷ *Id.* at 491.

³⁸ See, e.g., L.A. Zaibert, (490).

absence of ignorance or compulsion while performing an action, the action is involuntary, rather than voluntary.

It is also important to note that here is one other category that marks the boundaries between intentionally and voluntariness in the criminal law. This exception involves instances where agent's acts are committed with ignorance but produce a proper end. The classic example of this situation is the intoxicated actor, who is ignorant of the particular facts of a situation and of what the proper ends should, but nevertheless arrives at the proper ends irrespective of his poor judgment. Thus, it can not be said that the actor acted voluntarily because his combination of intoxication and ignorance suggests that even though the situation resulted in a proper disposition, the actor's lack of an ordered practical judgment negated his voluntariness, as well as responsibility for his coincidental positive outcome.

CRIMINAL NEGLIGENCE AS DEFAULT CULPABILITY

Criminal negligence is harshly criticized in the way that such offenses openly criminalize non-acts in defiance of the *actus reus* requirement.³⁹ Thus, criminal negligence presents a condition where some may be held liable even though they have acted without voluntariness or intentionality. The critics of this form of punishment contend that criminal negligence is on the outermost boundary of inculcation, finding the notion patently offensive, that the law of criminal negligence holds every individual accountable for knowledge of every fact about the world, as well as being charged with the capacity to be able to recognize all the risks associated with their actions. In the example of environment pollution, a criminal negligence offense, which is highly relevant in light of current topics in criminal law, and perhaps a crime that even the most liberal legal commentators find offensive, is one that the agent may be punished even if he did not act intentionally. Despite the criticism, Aristotelian scholars contend that Aristotle would not rule out criminal punishment for negligent acts.

In fact, Aristotle specifically states that:

³⁹ See, Dubber, (p10)

Harm done in ignorance which is due to intoxication or negligence is blameworthy, and the ascription of responsibility is proper because of that blameworthiness.⁴⁰

Although this Aristotelian concept might not seem consistent with his earlier theory of the preclusion of punishment without voluntariness, he provides an intriguing ground for the basis form of punishment. In Book III of the Ethics, Aristotle explains that a negligent act done, in ignorance of particulars, is an act that is evidence of carelessness, and is attributable to the actor's deficient character. Essentially, Aristotle believed that it was proper to ascribe responsibility for negligent acts because the connection between such an act and the actor's practical judgment; because of the flawed ordering of wish, deliberation, and choice as evinced in his conduct.⁴¹

In one of Aristotle's most famous quotes, he wrote:

I have gained this by philosophy: that I do without being commanded what others do only from fear of the law

This comment suggests that Aristotle believes that regardless of what final action is taken after deliberation, it is an individual's personal motivation for their action that determines whether it was truly an action of virtue. This philosophy becomes clearer in Book X of the Nicomachean Ethics, as Aristotle outlines the role of law in the ongoing formation of character, and implicitly proposes the imposition of criminal penalties for particular failures of character development, such as the commission of negligent acts.⁴²

The next logical question is how one goes about obtaining the philosophy required to consistently choose the most virtuous action. The answer, although not specifically addressed in

⁴⁰ See Generally, Aristotle (Nicomachean Ethics) Book III.

⁴¹ See, Kyron Huigens, Virtue and Criminal Negligence, 454.

⁴² See, id. at 455.

his book of ethics, seems to consist of having a proper upbringing and habitually performing acts consistent with good character. It is logical contention to believe that individuals who receive a proper upbringing during childhood and receive adequate attention to their character development during their youth will have a highest sense of instilled values. Beyond adolescence, the benefit of having a good mentor gives individuals guidance and intelligence which greatly enriches their perception of the world, incidentally having an positive affect on almost every instance of practical decision making, as their distinct sense of what is proper and what is not shapes their journey though life. However, it is not enough for an individual to receive an education encouraging moral virtue and having positive values instilled in their mental framework from their youth. The most important part of ethical virtue is to habitually and endlessly employ their knowledge of ethics to positively influence the world. One particularly Aristotle quote on excellence of character and the imperative requirement of it's habitual use is stated when Aristotle writes: "Men acquire a particular quality by constantly acting a particular way...you become just by performing just actions, temperate by performing temperate actions, and brave by performing brave actions." Consequently, habituation is an important component to character development, as well as potentially a life-long process.

CONCLUSION

As our historical-philosophical analysis on Aristotle's ethical virtues applicability to the modern criminal law concepts of inculcation and criminal responsibility has shown that ethical virtue; is the standard formed the people, has historically been used for ascertaining proper law and criminal culpability, and the path to obtaining an excellence of character. I conclude by offering the proposition that in the interest of justice and universal fairness, philosophy requires that punishment must account for some form of deficient ethical conduct, while on the other hand, an individual's habitual demonstration of good character should have positive bearing on any analysis of culpability, as the pursuit of the greater good of mankind is a distinctive principal of virtue which is embodied in the law of any republic that maintains democracy.

ARISTOTELIAN VIRTUES AND THE GOLDEN MEAN

(Part II)

Emanuel Mouganis

In this modern era of sociality, it is easy to forget that only 2000 years ago, there were great civilizations striving to define their sense of morality and determine rationalistic modes for explaining their very existence. However, while the scholars of this period were seeking to describe the human world, at the very same time, they and their fellow citizens were faced with a very cold and brutal world of constant war, deadly plagues, and seeming endless injustices. Nevertheless, particularly during the Classical Period of Ancient Greece, Aristotle, perhaps the most famous Greek philosopher resiliently emerged from the chaos of his times and was able to make the most significant advancements that the world has ever seen on the subjects of physics, metaphysics, poetry, biology, zoology, logic, rhetoric, politics, government, and ethics.

Aristotle was born in Stageira, Greece, 384 BC, a time and suited for the reflection and pondering of existence, especially in the midst of the perpetual Peloponnesian and Persian wars, where national quests for power made questions of day to day living a matter of serious concern. Nevertheless, Aristotle, who: born in to aristocracy, student of Plato, and most outstandingly, the personal mentor and teacher of legendary, Alexander the Great. Undoubtedly, Aristotle has made in his mark as a brilliant philosopher, creator of science, as well as the individual responsible for providing the predicating logic for the primary underpinnings of the studied concepts in today's "Western civilization."

Although some modern scholars consider Plato and Aristotle to have founded two different schools of Ancient philosophy, others consider Aristotelianism as a development and concentration of Plato's insight. Regardless of whether Aristotle founded his own school of thought, or innovated the teachings of Plato, Aristotle is rarely disregarded as one of the most influential Greek philosophers or is his work not found somewhere within the scholastic curriculum of any modern democracy. Although it is the opinion of many that Aristotle's system of thought single-handedly founded the sciences of Logic, Biology, and Psychology; this paper will focus on Aristotle's works on ethics. His most providential composition dealing with ethics,

is the *Nicomachean Ethics*,⁴³ (a composition comprised of ten books based on notes from his lectures at various *Lyceum*'s),⁴⁴ (in the spirit of tradition, Aristotle had had all ten books, both edited by and dedicated to his son, *Nichmachus*).⁴⁵

COMPOSITION

This paper is designed to serve as a supplement to “Aristotelian Virtue and Contemporary Punishment” (part I) and will generally cover the principles ethics and the development of ethical virtues under the provincial authority of the *Nicomachean Ethics*.

PRECISE KNOWLEDGE VS. GENERAL KNOWLEDGE

Aristotle believed that there were two different types of knowledge; respectively, precise knowledge and general knowledge. For example, logic and mathematics were thought to be a kind of precise knowledge. On the other hand, ethical knowledge is not considered to be precise, but instead a theoretical one, comprising the concept known as general knowledge. The primary difference between these two concepts is that while one may perfect their skill by the intense study of a precise knowledge, general knowledge differs in the way that one cannot become “virtuous” simply by studying what virtue is, but rather, one must be actually virtuous.

⁴³ (sometimes spelled ‘Nichomachean’), (Aristotle’s most advanced contribution to ethics), (Aristotelian ethics emphasize the importance of heightened ethical virtues in achieving the development of proper character)

⁴⁴ An secondary educational institution or public hall (scholars, philosophers, and politicians in ancient Greece typically pursued advanced education, usually through merit based financing)

⁴⁵ As he was the son of the most famous Greek philosopher, Nichmachus expectedly made extensive contributions to the study of the sciences, particularly in the areas of general mathematics, geometry, music, and astronomy.

HAPPINESS AND THE FUNCTION OF HUMANITY

Aristotle's idea of happiness resembles the concept of a final destination for individuals who have developed proper character during their lifetime and who have habitually used their high moral virtues while deciding the many decisions that led them to their final point in life. Essentially, Aristotle's belief is that happiness can only be found in ascertaining and developing the characteristics of the "specific function of man." Some say Aristotle's idea of happiness evolved from Plato's view that happiness, which is the belief that happiness can simply be found in the pleasure of fame and honor. However, this previous Hellenic view only contemplates the traditional Hellenistic ideals of virtues into account. Aristotle's view adds the component of the human soul to the equation, which is what specifically sets the human species apart from mere animals. The "human soul," as Aristotle calls it, is not merely determined as being existent or non-existent in each individual, but rather, it is a merit based theory determined on ethical virtues, that does not take what type of function you perform in society (i.e. worker, warrior, or ruler) into consideration.

PERSONALITY TYPES

Through the course of an individual's lifetime, each person can potentially develop a full sense of fulfillment and purpose, depending on the virtue of their actions and their respective personality type. As it will become clear that only habitual actions are a clear indicator of a person's character, Aristotle classifies all humans into one of four categories: the Virtuous, the Continent, the Incontinent, and the Vicious. At the high end of the spectrum are those who are virtuous. These individuals are ones that truly enjoy doing what is right and do so without moral dilemma. In our modern era, these are the people who always and consistently do the right thing, not because they are forced to, but because they know it is the right thing to do, and it is common in society to refer to these people as "a good person" or "an honest person." Slightly down the scale of moral virtue, are the continents, who are people who do the virtuous thing most of the

time, but must overcome conflict. Perhaps a good example of this type of person would be someone who has a negative view towards paying their income taxes, yet pays them anyway to avoid the consequences of a criminal prosecution of income tax evasion. At the top of list for negative personality types, there are the incontinent. These people are faced with the same moral conflicts as the rest of the civilization, but usually choose the vicious choice to a particular situation. To illustrate this personality type, a good example is a person who has the tenacity to gossip about the affairs of others, especially with a reckless disregard for the truth. This person is faced with the choice of either restraining their urge to unnecessarily discuss the affairs of others and also realizes that it is not the most virtuous thing to do, but nevertheless usually choose to engage in the activity with abandon. Finally, the most morally deficient type of person is what Aristotle calls the vicious. These are people who see little value in any virtuous activities and completely disregard any notion of virtue in their decision making. In essence, these are people who make decisions with a complete lack of respect or compassion towards the rest of humanity. Even though this personality type can exist in any level of social strata, it is most notable when it is demonstrated by a ruler type character. Obviously, the notorious war criminals of the last few generations can be easily classified into having this personality type.

THE GOLDEN MEAN

One of the main themes found in the *Nicomachean Ethics* is that every ethical virtue is based on the principle of balance, where there should be no immediate condition of excess or deficiency with respect to a particular trait. This middle ground or dynamic equilibrium of ethical virtue, follows the principal of moderation, and is presented by Aristotle as the “Golden Mean.” This Aristotelian theory of virtue closely resembles what we understand as the philological concepts of virtue today, the ability to use a mature and practical judgment in decision making. In Books II-VI of the Aristotle’s *Nichomachean Ethics*, the bulk of his discussion on virtue is given over to consideration of what he calls ethical virtue. These virtues specifically pertain to character, or rather the excellence of character, which is judged on the

basis of an individual's emotions and responsive actions to different events.⁴⁶ Although Aristotle examines the concepts of virtue in multiple aspects, Aristotle first classifies all virtues as either "Moral Virtues" or "Intellectual Virtues." Moral virtues, Aristotle lists them into the following categories: courage, temperance (moderation), liberality (moderation in giving and taking), magnificence (correctly dealing with great wealth or power), pride (rightfully claiming what is due to you), gentleness (moderation with respect to anger), agreeableness, truthfulness, and wit. Intellectual virtues consist of knowledge, prudence, intuition, and wisdom.

MORAL VIRTUES

Courage is a moral virtue which Aristotle regards highly, perhaps due to chaotic age in which he lived, where bravery on the battle field could mean the difference between life and death for that particular warrior, and could mean the difference between the survival and downfall of that warrior's particular nation. Nevertheless, in all of Aristotle's works on ethics, courage can always be sharply contrasted to cowardice (i.e. fleeing in the face of battle). In relation to the "Golden Mean" principal, courage is balance between the feelings of fear and confidence. If a person has too much fear and too little confidence in response to pressing situation, the moral deficient act is viewed as cowardice. On the other hand, if a person has too much confidence and too little fear, it could lead to the person making foolish and hasty decisions. To consider Aristotle's concept of courage to the application of contemporary law, suppose that a person with too much fear and too little confidence is obligated to protect or rescue another person (i.e. contract, familial relationship, or causing condition giving rise to danger of injured person). In this case, if the moral vice of cowardice affected the person to fail to perform their duty, they could be potentially criminally and civilly liable for any injury based on the person's failure to perform their duty. On the other hand, if a person with too much confidence and too little fear was faced with the same situation, they could be perhaps liable for exerting their duty with too much zeal, perhaps incidentally aggravating the injury of the one to

⁴⁶ Aristide Tessitore, *Reading Aristotle's Ethics* 25 (State University Press, Albany 1996).

rescue by making a hasty or presumptuous decision.

Temperance is generally construed to mean moderation, with respect to activities that involve indulgence or pleasure. As temperance represents the mean, insensibility would represent the deficiency of moderation, and self-indulgence would represent the excess of moderation. In a traditional Aristotelian manner, the classic example of a person who has evolved throughout life with a deficient temperance would be a self-indulgent man, who in his younger years would have seemed similar to stereotypical portrayal of a spoiled child.

Liberality is viewed as the moderation in giving and taking. This ideal is very similar to the modern legal principal prudence, although it is mostly used as a civil standard of judgment; it is most often articulated with the legal phraseology of “the reasonable and prudent person.” An imprudent person is considered one who prodigal, or displays a high level wastefulness in their dispensing of money and personal effects. However, it is also possible for a person to be overly prudent. These people usually give too little, and are commonly view by others as having a stingy demeanor.

Magnificence, according to Aristotle, involves the ability to correctly deal with great wealth or power. With respect to wealth, a person could be seen as excessive by spending money on tasteless or vulgar expenditures, which have little or no social utility of value. Although, if the person is of considerable means and fails to spend money on expenditures with high social utility, this could be seen as deficient. With respect to power, the imprudent power holder might improperly delegate responsibility to an individual of lacking credentials, while the overly prudent power holder might improperly abstain for any delegation and end up unnecessarily overburdening himself.

Pride is a concept that allows one to rightfully claim what honors are particularly due to you. When a person has too much pride in respect to their achievements, the resulting outcome is a morally excessive display of vanity. Although, if that person’s attitude is on par with their level of achievement, a person’s seemingly vain demeanor may actually be considered proper pride. If a person has too little pride, especially with respect to their achievements, this is

considered a deficiency in moral virtue.

Gentleness is viewed as a person's moderation with respect to anger. While a gentle person has a good temper and the ability to exert self control in situations that are relatively inconsequential or where the use of anger is unnecessary, a person with a bad temper will usually display too much anger for any given situation. It is important to realize that gentleness does not exclude the possibility that a person with high moral virtue will never display any level of anger; it is more concerned with a person's moderation with their anger. To illustrate this concept in the form of a question: Did the person act reasonably under the circumstances? In relation between the virtue of gentleness and the criminal law theory of mitigating circumstances reducing culpability for deadly force, the self-defense example is predicated on comparable grounds. Without going into a full discussion on the theory of self-defense, it becomes clear that the application of contemporary law for a person accused of murder considers whether the person has acted in accordance with society's view of proper temperament when deciding the proper charge of homicide. Incidentally, most states have statutes that automatically reduce the charge of murder to manslaughter if an understandably angering circumstance is involved, such as homicides that result in the heat of passion, or where the victim has committed a serious injury to the person or their family.

Truthfulness, obviously, is a person's tenancy to tell the truth. As we would hear in any American courtroom swearing in a witness, it would be required that the witness's testimony be: "the truth, the whole truth, and nothing but the truth." However, even when a declarant states a declaration that resembles the truth, it may still be to the excessive or deficient of truthfulness. If the declarant exaggerates the facts of the real truth, this is considered a deviation from the moral virtue. additionally, if the declarant fails to disclose facts, particularly relevant and material ones, this is also a deviation of the moral virtue.

Wit is a person's awareness to the facts of the world and the inadvertent consequence of his actions. If a person does not possess a level of thought process similar to his peers, he is viewed as unsophisticated. Although, being overly-sophisticated better than being unsophisticated, it is still not a demonstration of moral excellence. Rather a person with the

proper amount of wit will be in tune with each situation and will have a good sense of when and how his intellect should be applied to the situation.

The last moral virtue is, magnanimity, which is the virtue of being great of mind and heart. According to Aristotle, in order to be magnanimous, one has to possess a number of other virtues and act on them accordingly.⁴⁷ Magnanimity essentially puts other virtues into their proper perspective in terms of worth. In the case of honor, it allows a magnanimous person to accept honor from an excellent person since it is the greatest thing an excellent man can give; however, if the person giving the honor is not excellent, then the magnanimous person will disdain the recognition because it is not in accordance with his worth.⁴⁸ Although a magnanimous person will accept the proper honor, he will not be pleased by it because it is justified by his worth. Since a great person is most concerned with honor, he gives it little value.⁴⁹ Consequently, a person who has “both virtue and these goods (i.e. honor) is more readily thought worthy of honor.”⁵⁰ Thus, since a person must already possess virtue and be a great person in order to have magnanimity, Aristotle calls this moral virtue the “Crowning Virtue.”

INTELLECTUAL VIRTUES

Aristotle begins book VI by enumerating five intellectual virtues; knowledge, prudence, intuition, and wisdom. Although they would probably not be as easily considered virtues by today’s standards when compared to Aristotle’s moral virtues, they nevertheless are important in recognizing the golden mean standard, which can be used as a guide to practice decision making in accordance with ethical virtue.

⁴⁷ Aristotle, *Nicomachean Ethics* bk II (1124a).

⁴⁸ *See id.* at (2.1124a6).

⁴⁹ *See id.* at (2.1124a19).

⁵⁰ *See id.* at (2.1124a22-23).

Knowledge is the intellectual virtue that concerns a person's knowledge about facts of the world and about the inadvertent consequences associated with any particular action. Having the proper knowledge is imperative in making sound decisions, as knowledge of the facts and possible outcomes of certain courses of actions are crucial to successful strategic thinking.⁵¹ Although, having too little knowledge results in ignorance, having too much knowledge can sometimes lead to over thinking and putting too much focus on relatively mundane details.

Prudence is a crucial intellectual virtue that allows a person to adjust their behavior to accord with the golden mean. As is always the case with finding the correct ethical virtues to make the proper decision, prudence relates to the person's ability to differentiate between two imprudent behaviors or vices.⁵² For example, a "prudent person" is one who does not overreact to situation, but rather keeps his composure and allows himself time to comprehensively deliberate the issue before taking action.

Intuition (*nous*) is an ability, exclusive to human beings, that enable people to contemplate difficult intellectual subjects, such as the theories of science, mathematics, philosophy, and perhaps most importantly, the meaning of each person's existence. Aristotle believed that the intellectual virtue of intuition was closely related to the human soul. Aristotle delineated the various parts of the soul into three separate parts, each having a specific function to the human existence.⁵³ First, he identifies the nutritive soul (vegetative soul), which is found in all plants, animals, human beings, or any other creature that is capable of reproduction⁵⁴. The next part is the perceptive soul (sensitive soul), which the function is for perception of the surrounding world, is thought to be found only in animals and human beings.⁵⁵ The last part of the human soul is the rational soul, and is this part of the soul is exclusively found in human beings. However, one interesting point to make on the intellectual virtue of intuition is in the

⁵¹ Aristotle, *Nicomachean Ethics* bk VI ((6.1141b29-42a11).

⁵² *See Id.* at (6.1141b24-29).

⁵³ *See Generally* (bk VI).

⁵⁴ *See Id.*

⁵⁵ *See Id.*

multiple ways that it may be obtained in one's lifetime. Aristotle believes that the most proper way for a person obtain intuition is through a proper upbringing, along with mentors who diligently take measures to instill concepts of ethical virtue into the mind of child.⁵⁶ However, Aristotle also observes that children who are raised without a proper upbringing, the fosters the encouragement of moral virtue, or without the presence of proper mentors, the child can still reach the intellectual virtue of intuition by adulthood if the person's own personal study brings that individual to a sufficient level of understanding of ethical virtues and the person uses their ethical understanding to habitually make decisions.⁵⁷

Wisdom is at the peak of the ethical hierarchy for intellectual virtues and maintains a close ethical connection with prudence. It refers to the excellence not only in one area or endeavor, but rather to "general" or "complete" intellectual excellence. On this intellectual virtue, Aristotle presents a sharp conclusion that only the wise person knows not only what is derived from the principles of virtue, but also grasps the truth about the principals themselves. One other significant aspect of wisdom is that it can produce happiness.

In a relevant quote in book VI, Aristotle writes:

Wisdom produces happiness, not in the way that medical art produces health, but in the way that healthiness produces health. Being a part of virtue as a whole, its possession, or rather is activity, makes a person happy.⁵⁸

The most important aspect of wisdom is that it can, and usually will prevail over other competing intellectual virtues.⁵⁹ Based on observations of historical figures and their respective successes⁶⁰, Aristotle carefully concludes his lecture on wisdom to state that even rulers with superior knowledge of military tactics, politics, and strategy can be outmatched by another who has greater wisdom, in the sense that a person with a higher level of wisdom has less of a tenancy

⁵⁶ *See Id.*

⁵⁷ *See Id.*

⁵⁸ *See id.* at (6.1144a3-6)

⁵⁹ *See id.* at (6.1141b3-9)

⁶⁰ *See id.* at (6.1140b7-11)

to act imprudently or overly-prudently, thus, resulting in an outcome where the person is capable of better practical decision making, in all aspects of life.⁶¹

⁶¹ *See id.* at (6.1143b33-34).