

On the other other hand
Retranslating Aristotle on law

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Chapter I
Retranslating Aristotle

Right now, Aristotle's Greek is normally translated into smooth, sophisticated, elaborate English sentences. The purpose of translating in this way is to make the meaning of what Aristotle says clear to an educated English-speaking audience. This is very important, of course; indeed, it seems like the cardinal purpose of translation. But Aristotle did not write in a smooth, sophisticated, elaborate Greek. On the contrary, Aristotle wrote in a Greek that scholars say is terrible. For centuries, scholars even said Aristotle wrote as he did specifically to conceal his meaning.

Aristotle was not trying to hide his meaning, but when we read his writings, we must bear in mind that they were not written for an English audience, a modern audience, or for that matter, any audience at all. For the most part, Aristotle's works are notes, written in his own shorthand Greek, primarily for himself. Aristotle's father was a doctor. He trained Aristotle as a boy to keep notes of what he was working on. This was what doctors did back then; they kept private notes. Aristotle retained the habit of keeping private notes through the whole of his life.

At one period, when he was with Plato at the Academy, Aristotle wrote for an audience and published his work. Except for fragments, we do not have any of that work. What we call "The Works of Aristotle," are the unpublished notes Aristotle kept toward the end of his life about the many different questions he was asking himself, the many different things he was wondering about. These notes do not contain any of the complicated technical terms found in modern logic, mathematics or science and they do not use the elaborate philosophical terminology that has been developed in the years since Aristotle wrote. They are much less sophisticated than the translations make them out to be.

We are all indebted to the translations. Even very skillful readers of Greek cannot read Aristotle's works without a translation. But the translations distort Aristotle's voice in an effort to make what he says coherent and intelligible – to make him accessible and attractive to a sophisticated modern audience. Aristotle was very smart, but what he says in the writings we have is not the least bit sophisticated. He does not speak clearly in his works; one might almost think of him as mumbling to himself.

This book presents retranslations of some of the things Aristotle says about law. These are part of a different way of reading everything Aristotle says. These retranslations – which might almost be called “detranslations” – are an attempt to make clear how unsophisticated Aristotle's writings are. The works of Aristotle are one-off, hand-made antiques. This book is an attempt to strip off some of the paint that modern translation puts on what Aristotle says. To translate Aristotle in a way that meets our needs for sophistication adds something to his work, but it takes something away as well. Here is an example of a translation from Aristotle's *Topics*:

The consideration of similarity is useful both for inductive arguments and for hypothetical reasoning and also for the assignment of definitions. For inductive reasoning it is useful because we maintain that it is by induction of particulars on the basis of similarity that we infer the universal; for it is not easy to employ if we do not know the points of similarity.¹

If you know logic, you can understand what Aristotle is saying, but Aristotle did not know logic. He invented it. Aristotle had no understanding of what we have come to call “inductive reasoning.” The Greek words that have been translated as “inductive reasoning” mean “in-brought words.”

The Latin for “bring” is *duco* and it is from *in duco* that we get “inductive.” The history of the English language may force us to translate Aristotle into Latin and then into English, but the word “inductive” carries 2000 years of commentary on Aristotle and logic. To speak of “inductive” anything – “proof,” “logic,” “arguments,” “reasoning” – is to speak with a kind of logical sophistication that Aristotle did not have. Aristotle is not talking about “inductive logic.” He is talking about people bringing in examples to talk about and what he says is that we can only learn from examples if the examples have something in common.

¹ E.S. Forster, (Harvard, 1960), I. xviii, 108b 7-13.

This book is not a translation of Aristotle. It contains new “retranslations” of many passages in Aristotle’s works. I compare the retranslations with standard translations, first to show what is involved in translation (and retranslation) and second because detranslating the translations adds something to our understanding of what Aristotle says about law. This, in turn, may provide us with some new ideas about law.

Some new ideas about law

I have learned two new things about law by reading Aristotle the way I do. First I have learned that there are many justices. Aristotle says this straight out in *Ethics* and he uses the plural “justices” (or “justnesses”) to say it.

that there are justices many ... clear
 ὅτι μὲν οὖν εἰσι δικαιούναι πλείους ... δῆλον²

“Justices”, *δικαιοσύαι*, *dee kay (as in kayak) owe sue’ nigh*, with the accent on *sue*, is a plural. Aristotle uses this plural once and only once, when he says “there are many justices”.

Mostly, Aristotle uses the singular, *δικαιοσύνη*, *dee kay owe sue’ neigh*. The plural “justices” is an extremely unusual word in Greek. It stands out like a red flag but instead of translating it with the plural “justices”, the translators, insisting that in English, justice cannot be plural, translate Aristotle as saying, “there are many kinds of justice”.

The Loeb translation presents the quoted passage this way:

Thus it is clear that there are more kinds of Justice than one ...³

The Oxford translation presents it this way:

It is clear, then, that there is more than one kind of justice ...⁴

² *Ethics*, V. ii, 1130b 6-7.

³ H. Rackham, *Aristotle, Nicomachean Ethics* (Harvard, 1926, 1999) p. 252.

⁴ D. Ross, *Aristotle, The Nicomachean Ethics* (Oxford, 1925, 1998) Revised by J.L. Ackrill and J.O. Urmson.

The Penguin translation has:

We may now take it as proved that there is more than one kind of justice ...⁵

All three translations say justice is a single thing. It can come in different kinds, but it itself is singular and unitary. Aristotle does not say there is one thing called “justice” that comes in many different kinds. He says “there are many justices”. Each of them is consistent with itself, but inconsistent with the others, except for one, which is inconsistent with all the others because it is not consistent with itself.

In summary, when we say “just”, on the one hand we mean “equal”, on the other hand, we mean “in accordance with law”. When justice is equality, on the one hand, “equal” means “the same”, on the other hand, it means with relevant differences taken into account”. These are four different justices. Two of them are opposites of each other in one dimension and two are opposites in another dimension, but on the other other hand, they are all four the same. They are all internally consistent and there is yet another justice that is the opposite of all four in a different dimension. This justice is not internally consistent. It is unsystematic.

The idea that there is an unsystematic justice was new to me. There is a sense in which I should have known this because I was aware that Equity – at least in its inception – was not systematic, but I had never made the connection: equity=fairness=justice. Retranslating Aristotle the way I do has taught me this equation. In this book I examine what Aristotle says about the terms “equity” and “justice” and explain why “equity” is a bad name for the justice that is not systematic.

Retranslating Aristotle has also shown me something about natural law, the idea that there is something outside of law to which law must conform if it is going to be law. Over the course of this book, we will see that on the one hand, Aristotle is a natural lawyer, on the other hand, he is not. We will also see that when Aristotle says law has a “nature,” on the one hand, he says its nature has a deep moral component, on the other hand, he says it has no moral component at all. It is simply how things are. We will

⁵ J.A.K. Thomson, *The Ethics of Aristotle*, (Penguin, 1953)

see finally, that when Aristotle says the nature of law has a moral component, on the one hand, he says the nature of law is good, on the other hand, he says the nature of law is bad.

For me, it was a new observation that the nature of law could be bad. In the Western tradition, those who call themselves or would be called “natural lawyers” always say the nature of law is good and I had sort of assumed that that was what a natural lawyer had to say. Once I saw that the nature of law could be bad, I realized that in China, Confucius is a natural lawyer who says the nature of law is bad. That is his disagreement with the so called “legalists.” They say law is good. Confucius says law is all about badness. It has nothing to do with goodness.⁶

I also realized that in the West, the only ones who say the nature of law is bad are anarchists, and that no one, including themselves, would call anarchists “natural lawyers.” I have come to see that anarchists are natural lawyers. Aristotle’s saying that law is on the one hand morally good and on the other hand morally bad has taught me something about the nature of natural law.

The Method of Retranslation

I translate each Greek word in order, ignoring many of the refinements of the Greek language. With endings, prefixes, and subtle changes, mostly of vowels but sometimes of consonants, each Greek root can appear in 270 different forms, each of which means something slightly different. I often give just the root meaning. Following the Greek word order produces a kind of pidgin English that may be marginally understandable when it is very short but as soon as a passage goes on for any length, becomes almost entirely not understandable. The effect is increased because I do not use any punctuation.⁷ My “retranslations” are really “detranslations” of two languages. They are what someone might hear who knew Greek only primitively and had no knowledge of English syntax.

The retranslations are presented with the English immediately above the transliterated Greek. The way to use them, I suggest, is to pass over the Greek entirely, reading the English quickly to yourself without worrying

⁶ This is why O.W. Holmes could say law students learned law from “a bad man’s point of view”.

⁷ The original Greek has no punctuation; indeed, in the original Greek, the letters come one after another and not even the words are separated.

about whether you understand it or not. This is not easy to do, especially for good readers, who try to understand what they read. The retranslations are not meant to be understood. They are presented to show what has been added in the smooth, coherent English translations.

The retranslations are a background to the translations that follow them. The method of this book is to present a retranslation followed by one or more translations and then an exploration of the contrasts between them. (Sometimes I present several translations first and then a retranslation.) After you have read the translation or translations, you can look at the retranslation and the Greek that lies beneath it. The Greek is there so you can confirm what I say for yourself.⁸ The retranslation is there so you can see what Aristotle says without understanding it.

At certain points I argue that some of the translations are incorrect about Aristotle's meaning, but in the main, my retranslations are not about the meaning of what Aristotle says; they are about the medium in which he says it.⁹ Hopefully, they capture some of the message lost when a translation strives to convey meaning. A graphic example of what happens in the modern translations can be seen in *Politics*, at the end of Book I, where Aristotle talks about whether women, children, slaves or labourers have ἀρετή, pronounced *ah^fret A'*.¹⁰ This word is variously translated as "virtue" or "excellence" and I will have more to say about it later. Here I wish only to point out that in the long passage from 1259b 22 to 1260b 25,

⁸ In a way, this book could serve as a primer for learning Greek.

⁹ What I say here is derivative, of course, on the work of Marshall McLuhan. Another source to consult is Robert Alter's new translation of the Bible, *The Five Books of Moses* (N.Y., Norton, 2004). On the one hand, I read Aristotle the way I go to an opera. I am more concerned to hear his voice than to understand precisely what is being said. On the other hand, I try to hear what Aristotle is saying as clearly as I can. That is the purpose of retranslating him.

¹⁰ I explain the pronunciation of Greek words by breaking them up into English syllables. If I can, I use one syllable words that are exact matches. For example, ἐκκλησία, assembly, is pronounced *eck lay see' ah*, with the accent on *see*. "*Lay*" and "*see*" are one syllable words about whose pronunciation there is no disagreement. When there is no one-syllable English word that reproduces the sound of the Greek, I either try to mimic the sound; "*eck*" and "*ah*" are examples, or I use an English word with one or some of the letters in superscript. The letters in superscript are not pronounced. *fret* in *ah^fret A'* is an example. I use a capital letter to mean the sound of the letter as it is pronounced. *A* in *ah^fret A'* is an example, as is *D* in *δικαστήριον*, jury trial, *D coss^stay' ree on*.

The accent is indicated by ' . There is only one accent in each Greek word, no matter how many syllables there are. Readers of Greek disagree about how an accent works. Some say it is a stress, others say it is a release; still others say it is tonal, like Chinese. The standard transliteration does not indicate accent. A circumflex is used over two letters: êta, ê and ômega, ô. This is not an accent. It marks the difference between ε and η, epsilon and êta, o and ω, omicron and ômega. In *ekklêsia*, the ê and the accent do not coincide. In *aretê* and *dykastêrion*, they do.

where Aristotle uses the word *aretê* 16 times, the Loeb translation¹¹ uses “virtue” or “excellence” 29 times, the Penguin translation¹² uses “virtue” 28 times and the Oxford translation¹³ uses “goodness” 33 times. Some of these 33 are in bracketed passages which do not translate any Greek but are added expressly to clarify Aristotle’s meaning. The extra English repetitions are due in large measure to a difference between Greek and English.

[W]here the English language is generally intolerant of ambiguous reference, the Greek language thrives on it.¹⁴

This is particularly true for the Greek in Aristotle’s works.

Another manifestation of this difference between English and Greek can be seen in *Generation of Animals*, where Aristotle is trying to explain how seed from the father can produce the child. Literally he says, “it’s possible that on the one hand this (*tode*) moves this (*tode*) and on the other hand this (*tode*) moves this (*tode*).”

*endechetai de tode men tode kinêsai tode de tode*¹⁵

The Loeb translation has “And it is possible that A should move B, and B move C.”¹⁶ The Princeton translation is the same: “It is possible, then, that A should move B, and B move C.”¹⁷ The use of letters makes Aristotle’s meaning marginally clearer but there are places in Aristotle’s work where he himself uses letters¹⁸ and these translations make this comment look like those comments when it is not.¹⁹

A different well-known example is the word *εὐδαιμονία* (*you die now knee’ ah*). Aristotle uses this word extensively in *Ethics*. It is usually translated as “happiness.” While this translation conveys a lot of meaning it

¹¹ H. Rackham, *Aristotle, Politics* (Harvard, 1932)

¹² T.A Sinclair, *Aristotle, Politics* (Penguin, 1962)

¹³ E. Barker, *Aristotle, Politics* (Oxford, 1946)

¹⁴ R. Geldard, *Remembering Heraclitus, The Philosopher of Riddles* (Floris, Edinburgh, 1987) p. viii.

¹⁵ II.i., 734b 9-10.

¹⁶ A.L. Peck, (Harvard, Loeb, 1942)

¹⁷ A. Platt, *The Complete Works of Aristotle: The Revised Oxford Translation*, J. Barnes ed. (Princeton Univ. Press, 1984) The date of the translation is not given.

¹⁸ E.g *Posterior Analytics*, I xiii., 78b 25-28, *About Living*(*De. An.*), III.vii., 431a 25 - 431b 2. Aristotle is generally taken to be the first person to use letters to represent things.

¹⁹ The use of letters where Aristotle does not use them occurs quite often in his works. Another example is in H. Tredennick’s translation of *Metaphysics*, (Harvard, 1933) VII. iv, 1029b 28-1030a 18..

loses something. The Greek εὖ means “well” and when Aristotle explains εὐδαιμονία, he says that people say it is made up of εὖ ζῆν (*you zAn*) well-living, and εὖ πράττειν (*you prah' tAn*) well-doing. Aristotle uses εὖ three times in quick succession

to de eu zên kai to eu prattein tauton hypolambanousi tô eudaimonein

The three εὖs are clearly parallel, but the Princeton and Oxford translations have people “identify living well and faring well with being happy.”²⁰ The translation loses the parallelism.

It does so because no one can figure out how to say “well-δαιμονία” in English. A δαίμων (*die' moan*) is a god and Socrates had a δαιμόνιον (*die mo' knee on*), a little god who stopped him whenever he was about to say or do something wrong.²¹ “Well-little-godded” means nothing, so the translators drop the εὖ and settle for “happy,” thinking it is as close as we can get to what Aristotle means. We have lost what we might call “the poetry” in Aristotle’s expression.

In order to translate Aristotle, the translators look at the way Aristotle has come to be understood. They look forward in time. I work in the opposite direction, backwards. I explore the Greek language and occasionally I do not translate words. I explain them and look into their backgrounds. I then leave it to the reader to do the translating, in line with W.K.C. Guthrie’s observation:

To understand Greek ways of thinking without some knowledge of the Greek language is not easy. Language and thought are inextricably woven and interact on one another. Words have a history and associations, which for those who use them contribute an important part of the meaning, *not least because their effect is unconsciously felt rather than intellectually apprehended.*²² (emphasis added)

²⁰ *Ethics*, I.iii., 1095a 19. W.D. Ross (Princeton, 1984) rev. J.O. Urmson, and (Oxford, 1925,1980) rev.J.L. Ackrill and J.O. Urmson.

²¹ E. Barker, *The Politics of Aristotle*, (Oxford, 1946) says of *eudaimonia*, “Literally it means the condition of being under a good genius ...” p. lxxv.

²² *The Greek Philosophers* (London: Methuen, 1950), p. 4.

It is not hard to understand a little Greek. In what follows, I explore what Aristotle says for an audience that knows no Greek and for an audience that knows Greek well. I also talk about the way Aristotle does philosophy. I address these comments to an audience that knows no philosophy and to an audience that knows philosophy well. Since my retranslations are part of a different way of thinking about how Aristotle did philosophy, some readers who are familiar with Aristotle's works may simply dismiss what I say. I hope others will be able to do what Aristotle's works characteristically do, consider the possibility.

My different way of thinking about Aristotle has three aspects. First, while Aristotle was a philosopher, I do not think he has a "philosophy." For Aristotle, philosophy was a thing to do, not a thing to have. I explain this in the next chapter: Aristotle's Life Works, and Quote-unquote Philosophy.

Second, everyone, all the way from those who know a great deal about Aristotle to those who know only his name, thinks Aristotle is very difficult to understand, and sometimes he is. Some parts of Aristotle's work are impossible to understand and some take great effort. But much of what Aristotle says is quite simple and easy to understand. For instance, Aristotle says that if people spend money to gain office, they will be inclined to think of the office as something they purchased and expect to make a profit from it.²³ This is very simple and easy to understand, as is what Aristotle says when he is looking at what happens when a human being lifts a glass of water. He says,

should drink to me the upon-heart says
this a drink
the perception says
or the imagination or the mind
immediately drinks²⁴

²³ *Politics*, II. xi, 1273b 2-3.

²⁴ *Movement of Animals*, VII., 701a 32-4. Here is my retranslation, matched up with the Greek

should drink to me the upon-heart says
poteon moi hê epithymia legei
this a drink
todi de poton
the perception says
hê aisthêsis eipein

This is not hard to understand even in my pidgin retranslation. Indeed, it is a marvelous poem. The smooth Loeb translation makes it even easier to understand.

My appetite says I must drink; this is drink says sensation or imagination or thought and one immediately drinks.²⁵

Here is the Princeton translation.

I want to drink, says the appetite; this is drink, says sense, or imagination or thinking; straightaway I drink.²⁶

Notice that the first translation uses “I” and then “one” (“I must drink,” “one immediately drinks”) while the second uses “I” twice (“I want to drink,” “I drink”). As will become obvious in this book, skilled translators often disagree about the details of Greek grammar. This encourages me in my pidgin retranslations.

Aristotle talks about what is obvious. He says that “like the eyes of bats during the day, our mental life is blind to all of what is naturally most obvious.”²⁷ When we are doing practical things, he says, we have to ignore the obvious; we have to take it for granted. But when we are doing philosophy, what we have to look at is precisely the obvious, the first and most basic things.²⁸ Aristotle was a pioneer. He spoke about things far more simply and primitively than we do. He knew no Latin and never saw any of the 2000 years of commentary that has been written about his work. He did not have the benefit of a classical education.

Almost all the English translations of Aristotle use at least occasional Latin and all translate in light of the commentaries. They make Aristotle

or the imagination or the mind
ê hê phantasia ê hô nous
 immediately drinks
euthus pinei

²⁵ E.S. Forster, (Harvard, Loeb, 1937).

²⁶ S. L. Farquharson, *The Complete Works of Aristotle: The Revised Oxford Translation*, J. Barnes ed. (Princeton Univ. Press, 1984) The date of the translation is not given.

²⁷ *Metaphysics*, II.i, 993b 9-11.

²⁸ *Ethics*, I.iv., 1095b 1, *Politics*, III.v. 1279b 12-16.

articulate the philosophy that scholars have found in him. They are interpretations, not translations. All translators know this, of course, but it is ignored by them in the same way that classicists ignore the fact that Homer was not one person.

Aristotle is translated to make him sound as consistent and coherent as possible. This requires one to think Aristotle has a consistent “philosophy” and thus, one of the foremost modern Aristotelian scholars, says of one chapter in the *Posterior Analytics*, “This chapter looks like an early product of Aristotle’s thought, for it betrays considerable confusion.”²⁹ In other words, Aristotle is slowly purging himself of confusion. When he speaks of induction, this scholar says, “With regard to this activity Aristotle is not quite in agreement with himself.”³⁰

The translators expect Aristotle to be “in agreement with himself.” They expect him to be consistent and translate him as if he were. But Aristotle is not consistent. Quite the contrary; though Aristotle invented logic, he contradicts himself continually.³¹ In *About Translating*,³² for example, the center of his logical works, Aristotle says, “nothing happens by chance”³³ and then a page and a half later he says, “some things do happen by chance.”³⁴ This is not an isolated example. Aristotle says, “To think about the truth is hard and easy.”³⁵ He says, “People must love themselves, but the many (*hoi polloi*) should not.”³⁶ He says some things people say are

²⁹ W.D. Ross, *Aristotle* (5th ed. 1949, Methuen, 1923), p. 51-2

³⁰ W.D. Ross, *Aristotle* (5th ed. 1949, Methuen, 1923), p. 40.

³¹ So Cicero remarks that Aristotle “started the practice of arguing both pro and contra upon every topic ... setting out all the possible arguments on either side in every subject.” *De Finibus* V. iv.

³² This book, *Peri Hermêneias*, is usually called *On Interpretation* or *Dei Interpretatione* or *Dei Int.* I call it *On Translating*. *Hermêneias* (pronounced *her may nay’ ahs*) comes from *Hermês* (*her mace’*, Hermes, the messenger god). In Xenophon’s war stories, when a city is conquered, a *hermês* translates between the conquerors and the conquered. I would happily settle for *On Communicating* or *On Getting the Message Across* as a translation for *Peri Hermêneias*.

I use “translating” rather than “interpretation” first because “ing” is more active than “ation” and second because “interpretation” stresses the mental side of language, while “translating” stresses the oral side. Just imagine how different this book would be if its title were “Reinterpreting what Aristotle says about Law.” What you interpret is Aristotle’s theories. What you translate is what Aristotle said.

Obviously, interpreting and translating are very close, but professionals at either make them contraries. Interpreting is oral, translating is written. There are different exams and different certifications for translators and interpreters, but notice that to become a simultaneous translator, one goes to a school for interpreters.

³³ 18b 8.

³⁴ 19a 19-20.

³⁵ *Metaphysics*, II., 993a 30.

³⁶ *Ethics*, IX. Xii, 1169a 35.

orthos (or *tho^{ng}ss'*) and not *orthos*, “straight and not straight.”³⁷ He says, “It’s obvious that by nature some are free and others slaves.... But it isn’t hard to see that those who say the opposite speak straight.”³⁸ He says: “In a way, on the one hand, somehow everything has been said, in a way, on the other hand, somehow nothing has been said.”³⁹ Saying contradictory things is so characteristic of Aristotle’s work that if one came on a purportedly Aristotelian text that did not overtly contradict itself, one would have to doubt its authenticity.

One reason everyone thinks it is so difficult to understand what Aristotle says is that he talks about things that are so basic no one else even notices them. Everyone else can see them but no one else does, or at least no one else says they do. Aristotle talks about things that are so basic we don’t even have names for them.⁴⁰ For instance, he wonders when the mixture of two things makes a “new” thing; wheat and barley do not become a new thing when you mix them; they’re just wheat and barley. But some mixtures are “new things.” Cranberry juice and apple juice become cranapple juice. He wonders how we can say a child and a grown-up both have the “potential” to be a general. He wonders what the difference is between “walking” and “walking to Athens.” He wonders what it means to speak of something as having a “nature.”

In order to talk about these things, Aristotle draws distinctions that most people never draw. He distinguishes between what a thing is and what it is made of; between what it is made of and what shape it has; between the beginnings of things and their ends; between the beginnings and the ends of things and their middles; between things that are permanent and things that come and go; between things that happen accidentally and things that happen always or for the most part; between what a thing actually is and what it is potentially. He looks at things divided up and combined in more ways than you can imagine. He notices contraries and the middles between contraries. He notices contradictions and that there are no middles between them.⁴¹ He looks at how things are the same and how things are different.

³⁷ *On Life*, (usually called *De Anima*) II. iv, 416b 7 and III. ii, 426 a 17.

³⁸ *Politics*, I. v-vi, 1255a 1-4.

³⁹ *Metaphysics*, I.x, 993a 13-15.

⁴⁰ Speaking of the kinds of things he studies, Aristotle says: “not only is it difficult to discover the truth about them, there are no good words in which to say them easily.” *Metaphysics*, III.i, 996a 17-18.

⁴¹ A particularly relevant example is that there is no middle between “equal” and “unequal” but there is a middle between “just” and “unjust”.

By themselves, each of the distinctions Aristotle draws is simple enough, but Aristotle is not usually content to draw one distinction and stop there. He layers one distinction over another, over another, over another and to make things worse, Aristotle sometimes changes the distinctions.⁴² They mean one thing in one place, something completely different someplace else. Like a cubist painter, Aristotle sees everything from many different points of view, all at the same time. This is one of the things I like most about him – the funny way he sees things. Philosophers tend to be melancholic, but it stands out on every page of his work that Aristotle is not. Reading him makes me laugh. He is so amazed by the world, so eager to look at everything and say what he sees. He’s like a kid; he thinks seeing things is great fun. He says this right at the beginning of *Metaphysics*: “all people to see lust naturally.”⁴³

Most people find it hard to keep track of all Aristotle’s distinctions and many scholars feel that you cannot understand him unless you do so. They think that the only way to read Aristotle is to keep all his distinctions in mind all the time. They assume they can do this because they think Aristotle has created a coherent, consistent, philosophical system. I do not read Aristotle this way. I do not think Aristotle is precise or exact and I do not think he constructed a consistent system. Aristotle is musing about things. He is speculating about them rather than coming to conclusions. He knows words mean contrary things and he knows that all generalities are subject to exceptions. In recognition of this, he occasionally adds the Greek word *σχεδόν* (*sche don*)⁴⁴ to what he says. *σχεδόν* means “more or less,” “roughly,” “sort of.” Scholars talk at great length about the precise meaning of Aristotle’s Four Causes, but in *Physics*, II. iii, where he talks about what it means to say one thing “caused” or “is responsible” for another, Aristotle expressly says, “As for causes, this is roughly (*σχεδόν*) what is said about them.”⁴⁵

I read Aristotle as though he said *σχεδόν* everywhere. I am content not to know the last refinements of everything Aristotle says. I get enough out

⁴² The change he makes, for instance, in the distinction between a *protasis* and a *problema* is pointed out in W. Neale, K. Neale, *The Development of Logic*, (Oxford, 1962) p. 34-5.

⁴³ I.i., 980a 21. *εἰδέναι* (*A den' eye*), which I translate here as “to see,” also means “to know.”

⁴⁴ I cannot think of a way to express the pronunciation of *σχεδόν* in short hand. The first syllable is pronounced like the first syllable in “schedule,” except the ch is pronounced gutterally as it is in “Bach.” The accent is on *don*.

⁴⁵ *Physics*., 195a 3.

of understanding the beginnings of what he says. After all, the beginnings of things is what Aristotle himself says is most important.⁴⁶ I am not as interested in the meaning of what Aristotle says as most other scholars. I like hearing his voice. That is what I mean by the medium. Because of this, I do not think it is necessary to be as precise or detailed about what Aristotle says as most scholars do. I take what Aristotle says with a grain of salt; I do not feel the need to understand it in detail. I am more than happy if I can pretty much or sort of more or less hear what Aristotle is saying.

Finally, the third way in which I think differently about Aristotle is that I think he is doing what some would call “linguistic philosophy.”⁴⁷ He does say some straightforward, practical things that are not about words, for instance that cities should slope downward to the east,⁴⁸ that pregnant women should have exercise and eat a good diet,⁴⁹ that infants should drink milk, not wine.⁵⁰ But most of the time, Aristotle is not talking about how things are or how they should be; he is talking about how we say they are.

I am not the first to make this suggestion. W. and K. Neale say,

it is unclear whether Aristotle is classifying symbols or what they symbolize, words, or, in a very wide sense, things. This is a question which has exercised commentators since ancient times.⁵¹

One scholar who disagrees with me has written a commentary on *Categories* in which he says “the categories classify things, not words,”⁵² but notice that even this scholar feels it is necessary to say this. Even he thinks

⁴⁶ He says this several times, for instance, in *Politics*, V iv., 1303b 30, *Ethics*, I.vii., 1098b 8.

⁴⁷ Z. Vendler uses the term “linguistic philosophy” in *Linguistics in Philosophy*, (Cornell, 1967) p. 5. Vendler says linguistic philosophy “would comprise conceptual investigations of any kind based on the structure and functioning of natural or artificial languages” and gives “Aristotle’s reflections on being” as an example. Vendler has a chapter on “verbs and times” in which he discusses the difference between things that are done over time and things that are done at a time, for instance, seeking and finding, traveling and arriving. In Greek, the aorist tense expresses the second kind of action and certain verbs only occur in that tense. This would have drawn Aristotle’s attention to the distinction which he points out in *Metaphysics* IX. vi, 1048b 10 – 37.

⁴⁸ *Politics*, VII.xi., 1330a 40. (H. Rackham (Harvard, Loeb, 1932), numbers the chapters differently and makes this VII.x.)

⁴⁹ *Politics*, VII.xvi., 1335b 13. (Rackham, VII.xiv.)

⁵⁰ *Politics*, VII.xvii., 1336a 8 (Rackham, VII.xv.)

⁵¹ W. Neale, K. Neale, *The Development of Logic*, (Oxford, 1962) p. 25.

⁵² J.L. Ackrill, *Aristotle’s Categories* _____

one can make the mistake of thinking Aristotle is talking about words. This is because

though the items in categories are not expressions but ‘things’, the identification and classification of these things could, of course, be achieved only by attention to what we say.⁵³

So, whether Aristotle is talking about things or not, he looks at how we use words. This is glaringly obvious in some places in his works, for instance, Book V of *Metaphysics*, where he examines the meaning of one word after another: “beginning,” “cause,” “element,” “nature,” “necessary,” “one,” “being,” “substance,” “the same,” “opposite,” “before,” “after,” “power,” “how much,” “how,” “toward what,” “completed,” “limit,” “in virtue of which,” “placement,” “habit,” “be effected by,” “deprivation,” “to have,” “from something,” “part,” “whole,” “race,” “false,” “accident.”

That Aristotle is talking about words is also obvious in his concern for classification and definition and in his logic, which is about how the words “all,” “some” and “not” should be used.

Aristotle’s logic is about propositions – what can be said and the important differences between propositions were those marked by the occurrence of the negative particle and by the quantifiers ‘all’ and ‘some’.⁵⁴

More than that, Aristotle says that what it means to “know” something is to say it in the right way. For instance, we could say the angles of “an isosceles triangle are equal to two right angles,” but it doesn’t matter whether a triangle is isosceles or not, any more than it matters whether it is made of bronze. The angles of all triangles are equal to two right angles. If we don’t say things properly, Aristotle says, we don’t know them.⁵⁵ Knowledge is seeing what is obviously so and explaining why it is so.⁵⁶ The why of things (the *dio ti*, in Greek) is always a matter of words.

⁵³ Ibid, p. 78.

⁵⁴ W. Neale, K. Neale, *The Development of Logic*, (Oxford, 1962) p. 31.

⁵⁵ *Posterior Analytics*, I. iv-v., 73b 37, 74a 17, 74b 1.

⁵⁶ *Posterior Analytics*, II. viii, 93a 14-21.

I am not the only modern reader who thinks that Aristotle is talking about words rather than things. When U. Eco, looks at what Aristotle says about “being,” he sees that:

... being is something that is said ... it becomes a philosophical problem only when we talk about it ... being manifests itself to us right from the outset as an effect of language.⁵⁷

The linguistic approach to Aristotle is very much the minority view, particularly among English scholars. Even though Aristotle says expressly that he is talking about the contrary ways the word “cause” is used, most scholars take what Aristotle says about cause to be about cause, not the ways the word “cause” is used. The ways the word “cause” is used do reflect what we think about cause, but to talk about the ways the word “cause” is used is not to talk directly about how things are caused. It is to talk about what we say about it and how we think about it.

Another example is “living,” *ψυχή* (*p'see chA'*).⁵⁸ Aristotle is very clear about this. He says you can call something “living” if it takes in food, grows and reproduces itself. This is the least we mean when we say something is “living.” Thus, plants have *ψυχή*, have “life,” or better are *ψυχή*, are “living” or “alive.” Scholars translate *ψυχή* as “soul” and think Aristotle is talking about having one. This is confusing because it is odd to say plants have souls. All Aristotle says is that plants are spoken of as “living.” This means they take in what they need, grow and reproduce themselves. He notes that there is difficulty about the word *ψυχή* because it is used in different ways.⁵⁹ When we speak of animals as *ψυχή*, we mean that in addition to doing what plants do, animals perceive things and move around in response to their perceptions. (The Greek word that is translated as “perceive” is *aisthanomai*. It becomes our “aesthetic” and starts out meaning “catch a scent on the breeze.”)

⁵⁷ *Kant and the Platypus* (1997, English trans. A. McEwen, Harcourt Brace, 2000) p. 22

Some scholars think all philosophy is linguistic. Thus, L. Wittgenstein says, Philosophy, as we use the word, is a fight against the fascination which forms of expression exert upon us. *The Blue and Brown Books* (Harper, 1958) p. 27

⁵⁸ *ψυχή*, which becomes our “psyche,” is pronounced ^u*psy* ^{ba}*chA'*. Aristotle discusses it in a book called *Peri Psychê, About Psychê*. This book is usually called *De Anima* and *On the Soul*. I refer to it as *About Living*.

⁵⁹ *About Living* (*De. An.*), I.i., 402a 12.

When we speak of people as *ψυχή*, we mean that in addition to doing what plants and animals do, humans use *λόγος* (*law'gos^h*), words to speak and think with.⁶⁰ This fundamental characteristic of humans is Aristotle's major concern in his works. That is what I mean when I say he does "linguistic" philosophy.

Scholars think that what Aristotle says about "law" is about law. I take it to be about the use of the word "law," *νόμος* (*gnaw' moss*). That Aristotle is talking about the *λόγος* of *νόμος* is not contentious when it comes to some of Aristotle's works. For instance, scholars generally agree that in *Rhetoric* Aristotle is not talking about law but about the contrary ways the word "law" is used. In *Rhetoric*, Aristotle talks about how people make speeches either in an assembly, *ἐκκλησία* (*eck lay see' ah*) or in jury trial, *δικαστήριον* (*D coss 'stay' ree on*).⁶¹ He explains as part of this, how the word "law" may be used in such a speech.

Where the "linguistic" view of Aristotle becomes contentious, is in books like *Ethics* and *Politics*. Aristotle talks explicitly about law in both these books and most scholars think that, in *Ethics* for instance, when Aristotle speaks about law as an aspect of justice, he is talking about law and justice. I think he is talking about the contrary ways in which we use the words "law" and "justice." He is not talking about morality; he is talking about moral discourse.

To see the difference, consider this analysis of *Ethics*.⁶² Aristotle identifies six states or stages in people's moral development: brutish, vicious, un-self-controlled, self-controlled, good, and God-like. The first and last are not terribly important because no one achieves these states. The other four can be arranged on a chart using three categories: knows what to do, acts correctly, feels correctly.

⁶⁰ Aristotle does not think the line between plants and animals or the line between animals and humans is perfect. He knows that some plants can move and that some animals use something like *logos*. Still, he says we speak of "plants," "animals" and "humans," and this is what that *logos* means.

⁶¹ He also talks about how to make a speech at a public occasion like a funeral, but law does not come into such speeches very much and it comes into the other kinds of speeches a great deal.

⁶² J.O. Urmson, *Aristotle's Doctrine of the Mean* in A.O. Rorty, *Essays on Aristotle's Ethics* (U. of California, 1980) and (1973) 10 AMER PHIL. Q. 22

	knows	does	feels
vicious	no	no	no
un-self-controlled	yes	no	no
self-controlled	yes	yes	no
good	yes	yes	yes

A self-controlled person and a person who is good both do what is right and between the two we might prefer the good person because a person who feels like doing what is right is more likely to do what is right. But is that person morally better than a person who does what is right and doesn't feel like doing it?

Now we cannot distinguish the good man, the man with an excellent character, from the self-controlled man either by his actions or by his beliefs and reasoning. They both act in the same way, and they do so under the guidance of the same practical thinking. The only way in which the good man differs from the self-controlled man is that he wants to act in the way he does, whereas the self-controlled man does so with difficulty.⁶³

Are these two men morally the same? On the one hand yes, on the other hand no. Can we distinguish them in *λόγος* words and thought? Yes.

I think Aristotle is talking about *λόγος*, what we say and think, not what is. Thus, in *Politics*, I think he is talking about how the word "law" is used in conjunction with the word *πόλις polis* (*paw' lis*). One strong indication of this is that very early in *Politics*,⁶⁴ Aristotle speaks of *kaloumenê polis* – (*kah loo men' A polis*) "what is called a *polis*" or perhaps even, "a so-called *polis*."

To illustrate the kind of insights about law that may be achieved by "retranslating" Aristotle and concentrating on his language, I point out that none of the present translations for *polis* is proper. Athens was a *polis*. Sparta was a *polis*. Thebes, Corinth, Argos, each was a *polis*. Since each was also a city, it is normal and natural, in many contexts, to translate the

⁶³ *Aristotle's Doctrine of the Mean* in A.O. Rorty, *Essays on Aristotle's Ethics* (U. of California, 1980) p. 158..

⁶⁴ I.i, 1252 a 7-8.

Greek word *polis* as “city.” Thus, we can use “city” to translate *polis* in Xenophon’s war and travel books but we cannot use “city” to translate *polis* in Aristotle’s *Politics*.

A modern city is not what Aristotle means by a *polis* because the laws of modern cities are nested in larger laws. The law of Montreal is nested in the law of Quebec, which is in turn nested in the law of Canada. The idea of one law nesting within a larger one is Roman. Aristotle would not have understood it. For him, a *polis* was virtually defined by having its own un-nested law. To translate *polis* as “state” or “city/state” may once have been helpful, particularly in Europe where the law of each nation state was not nested in any other law. But, if the translations “state” and “city/state” helped at one time, they no longer do so.

There is no English translation for *polis*. Indeed, because there is no such thing as un-nested law anymore, there is probably no translation for *polis* in any modern language. It is ironic that the *polis* and its un-nested law was disappearing even as Aristotle was writing about it. Aristotle made the notes we call *Politics* over the course of the 12 or 13 years before he died in 322 BC. It was just at this time that the last of the 180 or so Greek *polisses*⁶⁵ that had existed in classical times were being swallowed up in the Macedonian empire that preceded Rome.

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One aspect of my view that Aristotle is not talking about things but about the way we speak about things is a theme in this book: integrated contrariness.⁶⁶ Aristotle says, “The quantity of words is limited. The number of things is not limited. Words must mean more than one thing.”⁶⁷ He also says “everything is opposites or comes from opposites.”⁶⁸ If we couple these two remarks, we see a strong theme in his work. All words have meanings that are contrary to each other. He says that explicitly in *Topics*.⁶⁹

⁶⁵ The proper Greek plural is *poleis* (*paw’ lace*). I use *polisses* as the plural of *polis* because, there being no proper translation for *polis*, I use *polis* as if it were an English word. In deference to *kahloumenê*, I retain the italics as implicit single quotes.

⁶⁶ This could be “integral” contrariness.

⁶⁷ *Sophistical Refutations*, I., 165a 11-12

⁶⁸ *Metaphysics*, IV. ii, 1005a 4. The Greek word could be translated as “opposites” or “contraries”. The contrariness of language comes up quite often in *Metaphysics*, e.g. IX. i, 1046 b 5-11 and X. i, 1052b 27. At *Physics*, I. v, 188b 25, Aristotle repeats that “everything that comes in nature is opposites or from opposites” and at I. v, 189a 10, he says “it appears that the beginnings must be contraries”.

⁶⁹ 140a 20.

οἱ γὰρ καλῶς “they are good (beautiful)” ἀποδομένοι “those that are given” καὶ τοὺς ἐναντίους “opposites” προσσημαίνουσιν “set up a sign”. The Loeb translation is “for correctly assigned definitions also indicate their contraries”.⁷⁰ In other words “up” makes “down”. More important “up” makes “up”.⁷¹ We all know what “up” means, but if we were looking at the Earth from outer space and saw two rockets going up, one from North America, and one from Australia, they would be going in opposite directions. A person’s salary and temperature can both go up. Do they go in the same direction? On the one hand yes, on the other hand no.

“Down” is a contrary of “up” but from some point of view “up” is also a contrary of “up”. Since there are various points of views, words have more than one contrary meaning.⁷² Words mean different contraries in different dimensions. Words shimmer with contrary meanings. When we use them, on the one hand we understand each other; on the other hand we do not and cannot.

This paradox is the heart of Aristotle’s works. It is expressed over and over again throughout them. The scholarly tradition is to read Aristotle as if he were consistent. Thus, one scholar says:

Aristotle’s discussion of the distinction between natural and conventional rights occupies little more than a page of the *Nicomachean Ethics*. Compared to succeeding weighty tomes on natural law, it appears amazingly brief and compressed. Nevertheless, these few sentences have inspired commentators to describe Aristotle as “the philosophic founder of authentic natural law,” for whom natural rights represents “the eternal laws of morality and an “immutable” standard of justice whose superiority to all mere opinion and positive law is “self-evident” and “absolute” (citations omitted) A much smaller group of commentators has denied that this brief passage of the

⁷⁰ E. S. Forster (Harvard University Press, 1960)

⁷¹ Aristotle points out that “up” has contrary meanings in *About Living (De. An.)*, II. iv., 416a 3-4. At 416b 27-8, he points out that “what does the steering” is on the one hand the hand, on the other hand the rudder.

⁷² At 1055b 30 of *Metaphysics*, Aristotle insists that each thing has only one contrary, but that is in a given context. He recognizes that there are different contexts and hence, there are different contraries. He himself discusses oppositeness and contradiction, two different kinds of contrariety.

Nicomachean Ethics develops the idea of a final, inherently correct standard of justice. (citations omitted).⁷³

As I have already indicated, I think both of these are true. Aristotle is a natural lawyer and he is not a natural lawyer. I am not troubled by this inconcistency. Most scholars are, so the author cited above goes on to say:

I agree with the conclusions of this second group of commentators. None, however, has provided, in my judgment, a satisfactory account of what Aristotle means by natural right if not a description an inherently just state of affairs.

He wants consistency. I relish Aristotle's inconsistency. Indeed, I am convinced that if Aristotle were consistent, I would not like him. His inconsistency is wonderful. The centre of his work is the paradox: everything is easy to understand and nothing can be understood. The world itself is not hard to see, Aristotle says but humans must use λόγος, words, to explain their understanding of the world to others in speech and to themselves in thought. That we live in λόγος, constantly explaining things to ourselves and others is what makes humans different from animals.

Humans love to use λόγος because it is our nature to do so but λόγος has a quality that makes it unusable. Every word means itself and its opposite in several dimensions. Aristotle is famous and loved for developing logic but his logic is hypothetical. If words could mean one thing and one thing only, then it would be possible to be logical. But words cannot mean one thing and one thing only. Humans cannot speak about the world and be logical.⁷⁴

In *Categories*, as I will explain in a moment, Aristotle talks about the word "is." He says this word has contrary meanings. In *Metaphysics*, Aristotle talks about "is not." He says it, too, has contrary meanings. To say something "is not" means one thing if it is supposed to be and a contrary thing if it is not supposed to be. "There is no tail on that dog" is not the same as "There is no horn on that dog." Under certain conditions, given

⁷³ B. Yack, *Natural Rights and Aristotle's Understanding of Justice*, (1990) 18 *Political Theory* 216, 217.

⁷⁴ Logicians used to say that the only thing one could be logical about was logic itself. I believe modern logicians think even this is not possible.

certain sets of assumptions, in certain senses and from certain points of view, these are contraries.

Each word is an integrated contrariness and many comments in Aristotle's works indicate that he thought of "law" as a particularly rich field of integrated contrariness. Isn't this obvious? There is written law/unwritten law. Common Law/Civil Law. Natural Law/Positive Law. Public Law/Private Law. Substantive Law/Procedural Law. This list of contraries could be extended almost indefinitely and notice that each of these contraries is contrary in a different dimension.⁷⁵ This is how contrariness is integrated.

Another dimension of the integrated contrariness that is law can be seen if we notice that law itself has many different contraries. One contrary of law is anarchy. Another contrary is equity. These two contraries are not the same. They are contraries in different dimensions and since contrariness is fractal, both anarchy and equity are themselves subject to contrariness. Thus, though anarchy is the contrary of law, it is also the "law of the jungle." Anarchy is both law and the contrary of law. The same is true for equity. On the one hand the Courts of Equity were courts of law; on the other hand they were not Courts of Law.

A third contrary of law is fact. Fact is a contrary of law in yet another dimension, a dimension that is more internal to law because the contrariness between law and fact has consequences for legal decisions. If there is a jury, the jury decides questions of fact and the judge decides questions of law. If there is no jury, the judge decides both the questions of fact and the questions of law. This does not make them the same, however. A decision on a question of law is generally reviewable on appeal, while a decision on a question of fact is generally not reviewable. If this contrariness seems simple, notice that whether a question is a question of fact or a question of law is itself a question of law, unless the question is "What is the law in a foreign jurisdiction?" This is a question of law in the foreign jurisdiction, but in the jurisdiction where the question is asked, it is a question of fact.

Legal reasoning itself is a process of integrating contrariness. Law joins global distinctions and individual events by a series of yes/no, on/off distinctions. Law draws lines. (Aristotle's point about generalizing from

⁷⁵ In *Metaphysics*, XII. ii., 1069b 10-15, Aristotle says contraries work in different dimensions. He calls them "categories."

examples is relevant here.) Each global distinction is a horizon, over or under which everything falls. Every legal distinction creates a pair of mutually exclusive categories. The injuries of the plaintiff in a tort action were either caused by the accident or they were not. If the plaintiff's injuries fall in the second category, if they were not caused by the accident, the plaintiff loses. If the plaintiff's injuries fall in the first category, if they were caused by the accident, the integrated series of contrarities continues. Was the accident caused by the defendant? Yes/no? If no, the plaintiff loses. If yes, the series of contrarities continues. Was the defendant negligent in causing the accident? Yes/no? If no, the plaintiff loses. If yes, the series of contrarities continues. Did the defendant have a duty to be careful toward the plaintiff? Yes/no? If no, the plaintiff loses. If yes, the series of contrarities continues.

Many different contrarities could follow the last one. Did the defendant's duty of care toward the plaintiff include not injuring the plaintiff in this particular way? Was the defendant acting as a government entity when it negligently caused the accident that caused the plaintiff's injuries? Many different contrarities may precede the first one. Was the defendant served with a writ within two years of the accident? Did the accident occur in this jurisdiction? The series of integrated contrarities that is legal reasoning culminates in a decision for one party or the other. In law, reasoning that is not part of this chain of contrarity is irrelevant. In a judge's mouth, it is *obiter dictum*.

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By way of concluding this introduction to retranslating Aristotle, I present a retranslation and two translations of something he says near the beginning of *Categories*, the book that has traditionally been placed first in his Works. The passage concerns what are generally referred to as Aristotle's "Ten Categories." Aristotle does not have *ten* categories; he has 1+9, and they are not "categories." What Aristotle is talking about is the 1+9 different ways to use the word "is."⁷⁶

Whenever you speak of anything, for instance, "that man" or "that horse," you implicitly say it exists. That man "is." That horse "is." Aristotle points out that we do not usually say this "is" out loud; we simply

⁷⁶ E. Benveniste, *Problèmes de linguistique générale* (Gallimard, 1966) Vol. 1, p. 70.

speaking of “that man” or “that horse,” but implicitly, whenever you speak about anything, you say it “is.” This is the first way of using “is,” to say something exists; the +9 other ways of using “is” say something about a thing that exists: “That man is armed.” “That horse is white.” Aristotle says the +9 ways of using “is” are all contraries of each other and all of them, collectively, are contrary to the 1 use.⁷⁷

This is not difficult to understand. Indeed, it seems rather simple and Aristotle expresses the point in very simple language.

of those according to <i>tôn kata</i>	nothing <i>mêdemian</i>	with-braided <i>symplokên</i>	saying <i>legomenôn</i>
each <i>hekaston</i>	either <i>êtoi</i>	ousian <i>ousian</i>	signifies, or how much <i>sêmainei ê poson,</i>
or what <i>ê poion</i>	or toward what <i>ê pros ti</i>	or where <i>ê pou</i>	or when <i>ê pote</i>
or to lay <i>ê keisthai</i>	or to have <i>ê echein</i>	or to do <i>ê poiein</i>	or to have done to <i>ê paschein</i> ⁷⁸

Standing alone, my primitive, word-for-word retranslation of this passage is almost unintelligible:

Those according to nothing with-braided said each are ousian signed, or how much, or what, or toward what, or where, or when, or to lay, or to have, or to do, or to have done to.

I do not even translate the hardest word in the passage, *οὐσίαν*, *ooh see' on*.

Much of Aristotle's *Metaphysics* is about the meaning of the word *οὐσία* (the basic form of *οὐσίαν*). What is an *οὐσία*, an existing thing, a substance, an entity? The relationship between being and entity is one of the hardest things for Aristotle to explain to himself. To exist you must be a

⁷⁷ *C ategories*, 3b 33 – 4a 27.

⁷⁸ IV. 1b 25.

thing. To be a thing, you must exist.⁷⁹ Aristotle never makes it clear exactly what *οὐσία* means⁸⁰ and I don't feel I can either.

Here is the Loeb translation of the same passage. It is easier to understand than my retranslation.

Each uncombined word or expression means one of the following things: what (or Substance), how large (that is Quantity), what sort of thing (that is Quality), related to what (or Relation), where (that is, Place), when (or Time) in what Attitude (Posture, Position), how circumstanced (State or Condition), how active, what doing (or Action), how passive, what suffering (Affection).⁸¹

This translation is helpful, particularly for “active” and “passive,” but notice that it can only distinguish *οὐσία*, “what” from *ποιόν* (*poi on*) “what sort of thing” by adding “Substance” and “Quality.” The capitalized words, presented in parentheses, are the traditional or canonical names of the Ten Categories. There are no capital letters in what Aristotle says and no hint of them. Aristotle uses simple words like *poion*, *pou* and *pote*, “what,” “where” and “when.” The Loeb translation takes the “philosophy” that scholars have attributed to Aristotle and applies it to what Aristotle says. It treats *poion*, *pou* and *pote*, very simple words, in the same way as it treats *οὐσία*, a very hard word.⁸²

Here is the Princeton translation of the same passage.

Of things said without any combination, each signifies either substance or quantity or qualification or relative or where or

⁷⁹ *Metaphysics*, XI. iii, 1061a 15-18. “The one being somehow, the being, one.”

⁸⁰ *Metaphysics*, VII., xiii, 1039a 20 ff. “No are dividing lines. In a way, on the one hand, some there is, in a way, on the other hand, some not.” Aristotle says *οὐσία* is a contrarity. Thus, he talks about *πρώτη οὐσία*, first *οὐσία*, and *δευτέρα οὐσία*, second *οὐσία*. First *οὐσία* is “that man.” Second *οὐσία* is “man.”

⁸¹ H.P. Cooke, *Categories* (Loeb, Harvard University Press, 1938, 2002)

⁸² To convey Aristotle's meaning, this translation adds a level of complexity to what Aristotle says and accidentally imports a range of questions that has nothing to do with Aristotle's text. Why do some of the capitalized words require “that is,” while others do not? Why is there no “or” between “Posture” and “Position,” when there is one between “State” and “Condition”? Why does “Action” take an “or” while “Affection” does not?

when or being in a position or having or doing or being-affected.⁸³

Notice that this translation, while much closer to mine, is like the Loeb in that it too treats *οὐσία*, “substance” in the same way as it treats *ποιὸν*, “qualification.” It makes them into equally difficult words. Notice also that it leaves the *τι* out of *πρός τι* and translates these two words as if they were one word: “relative.” Aristotle refers to all the other ways to use “is” with one word. Only *πρός τι* requires two words. All the single words can stand by themselves. *πρός* cannot. It requires *τι*. The Loeb translates *πρός τι* as “related to what (or Relation).” I translate it as “toward what.” The Princeton translation simply leaves the *τι* out.

One reason to include the *τι* can be seen in a comment Aristotle makes in *Ethics*.

we deliberate not about the end
bouleuometha d' ou peri tōn telōn,

but about the toward the end
*alla peri tōn pros ta telē*⁸⁴

The Loeb translates this as “we deliberate not about ends but about means.”⁸⁵ Aristotle does not talk about “ends” and “means.” He talks about *τέλος*⁸⁶ (*tell' oss*) and *πρός τὰ τέλη* (*pros ta tell' A*), “ends” and “toward the ends.”

It is a sin to translate *πρός τὰ τέλη* as “means.” Linguistically, *πρός τὰ τέλη* cannot be separated from *τέλος*; *πρός τὰ τέλη* has the word *τέλος* in it. “Means” does not have the words “ends” in it. Linguistically, “means” and “ends” are completely separate. That is the point of the word “means.” It is meant to separate the *πρός τὰ τέλη* from the *τέλος*. *πρός τὰ τέλη* is the

⁸³ J.L. Ackrill, *The Complete Works of Aristotle: The Revised Oxford Translation*, J. Barnes ed. (Princeton Univ. Press, 1984) The date of the translation is not given.

⁸⁴ III. iii, 1112b 13

⁸⁵ H. Rackham, *Aristotle, Ethics* (Harvard, 1926).

⁸⁶ Aristotle uses the plural genitive form *τελών*. *τέλος* is the basic singular, nominative form.

tacking of a sailboat. “Means” is an outboard motor, cutting across the wind.

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One final comment ties this example back into law. *κατηγορέω* (*cat A gore eh' owe*), the Greek word that becomes “categories,” means “to accuse someone of a crime.” A category, naming something, saying something is or saying something about it, is an accusation.

Chapter II

Aristotle's Life, Works, and Quote-unquote Philosophy

Chronologically, the three best-known names in classical Greek philosophy come in reverse alphabetical order: Socrates, Plato, Aristotle.⁸⁷ As I will explain, Aristotle and Socrates are very closely related.⁸⁸ Since Plato stood between them, it makes sense to begin with him. Plato's philosophy was that *φαινόμενα* (*fie gnaw' men na*) – the things we see or how things seem to be – are illusions. We all know how faulty our senses are. We all know things change. According to Plato's philosophy, the only real reality, the only enduring reality, the only things people can know for sure are certain ideas or forms that we knew before we were born. When speaking about Plato's philosophy, it is usual to give these words capital letters. Plato's philosophy is that Real Reality is Ideas (in Greek *ιδέας*) or Forms that people Know from before they are born.

When he was 17, Aristotle became a student at Plato's Academy. He stayed there for 20 years, winding up as Plato's colleague. We have some fragments of what Aristotle wrote while he was at the Academy. They are dialogues like Plato's dialogues and like Plato's dialogues, Aristotle's are said to have been very popular. However, unlike Plato's dialogues, which still exist, Aristotle's dialogues have almost completely disappeared. We do have some fragments of them, quotations in other ancient authors and at the suggestion of W. Jaeger,⁸⁹ scholars have recently been reconstructing some of these early dialogues. They reveal just what one would expect: that while he was with Plato, Aristotle followed Plato's philosophy.

If you read Aristotle's later work, however, the work he did when he was running his own school, the Lyceum, you see that in the middle of his life, Aristotle had a change of heart. By the time he reached his 50s, the period when he was keeping the notes we call his "Works," Aristotle had

⁸⁷ In the preface to Liddell & Scott, *An Intermediate Gree-English Lexicon*, H.G.. Liddell casually says Aristotle is not part of classical Greece.

... from Homer downwards, to the close of Classical Attic Greek, care has been taken to insert all words. Besides these, will be found words used by Aristotle ...

⁸⁸ "... great parts of Aristotle's political philosophy, especially those in which he is in explicit opposition to Plato, go back to Socrates" H. Arendt, *The Promise of Politics*, (Shocken, 2005) p. 16.

⁸⁹ *Aristotle: Fundamentals of the History of His Development* (Oxford, 1934).

given up Plato's philosophy. He had come to think that Plato's idea of Ideas only added a level of complexity to our understanding of things.⁹⁰

Like animals, people act in the world. They do things. At the most basic, they move about and get their food. Humans are different from animals in that while humans are doing things, they are talking to themselves about what they are doing and trying to understand both what they are doing and what they are saying about it. Aristotle accepted what he called, the *πράκτικη ζόη* (*prack' tea K zo'A*) the practical reality of life. He accepted that people are required to do things. If they were not, they might spend their time trying to uncover the Ideas or Forms they had been born with.

As animals, however, people have to pay attention to how things seem to be; they have to pay attention to *phainomena*. In his later years, Aristotle spent all his energies trying to see *phainomena* as clearly as he could. He tried to see things with as little "philosophy" as possible. He tried merely to look at things and say what he saw. This is what people call "the Aristotelian method." It is the center of reading Aristotle, the thing that makes people like him so much. He looks at things and says what he sees. When he was young, Aristotle had a philosophy; he had Plato's philosophy. When he was older, Aristotle had no quote-unquote philosophy, or we could say he had the ordinary philosophy of an animal: pay attention to what you see.

Because they are human, people turn what they see into words. They try to understand what they see, if only because doing so makes it easier for them to get food. Like everyone else, Aristotle tried to say what he saw, but he did not do this because it made anything easier for him. Aristotle tried to understand things for the sake of understanding them, not for the sake of doing something else. The first thing he says in his notes about *Metaphysics* is that people love to learn things. The proof of this, Aristotle says, is that they love to see things. They love to see things even if they gain nothing practical from doing so. People simply love to see things.

The Greek word for "see" and "know" is the same – *εἰδέναι* (*A' den eye*). Philosophers, literally "lovers of wisdom," are the lucky few who get to spend their time looking at things and saying what they see for the sheer

⁹⁰ *Metaphysics*, VII. 6. 4 ff, 1031a 28. Aristotle says this in several other places.

pleasure of doing so. Aristotle says this is next best to being a god.⁹¹ Philosophers do not do philosophy for the sake of something else. They do not try to understand things so that they can do things and make things happen. Philosophers try to understand things for the sake of understanding things.⁹²

In his later years, philosophy was for Aristotle an activity, not the product of that activity. In his 50s, Aristotle was no longer interested in the product of philosophy. Having a quote-unquote philosophy is having answers to philosophical questions. It is knowing what you think and telling others what you think. Plato presented his answers obliquely in dialogue and myth and people still struggle to figure out what Plato's answers were, but that Plato had answers is not a matter of dispute. Everyone thinks Plato had a quote-unquote philosophy.

Aristotle thought Plato asked some very good questions, but when he got to be an older man, Aristotle ceased to be interested in Plato's answers to those questions. Aristotle did not reverse Plato; he bypassed him entirely and went right back to Socrates, who, according to Aristotle "asked but did not answer."⁹³ Aristotle thought Socrates took his questioning in the wrong direction, but he thought Socrates was right to ask questions rather than give answers.

In his later years, Aristotle demonstrated his agreement with Socrates by his actions. As a young man, when he accepted Plato's philosophy and believed in Plato's answers, Aristotle wrote and published dialogues just as Plato did. These dialogues were meant to tell people the answers to philosophical questions. That is why they were written and published. In his later years, Aristotle did not publish anything.⁹⁴ He went back to Socrates. Socrates "published" his questions in the sense that he asked them publicly – so publicly that he died for asking them – but Socrates did not

⁹¹ *Ethics*, X. vii, 8, 1177b 30.

⁹² In *Metaphysics*, Aristotle says "wisdom is for its own sake." I. ii, 982a 14. Aristotle, of course, is speaking about himself when he says all this. He may have been aware of this because elsewhere in his works he remarks that people think the life of the gods is like their own life. *Politics*, I. i, 1252b 28

⁹³ *Sophistical Refutations* XXXIV, 183b 7.

⁹⁴ In *Politics*, III. vii, 1278b 32, when Aristotle is listing the different ways a *polis* may be governed, he says he has explained these many times in *exoterikois logois* – "public words." One could take these *logois* to be works Aristotle wrote for publication in his later years, but Aristotle does not say they were written, they may have been oral, and even if they were written, they might have been things he wrote in his early years. If Aristotle did publish things in his later years, one would expect there to be some evidence of it and there is none.

write anything down. Socrates never published anything in writing, certainly not answers like Plato's. In his later years, Aristotle abandoned Plato and publication. He followed Socrates by not publishing, but Socrates had refused to even write things down and Aristotle was not about to follow him in that. Aristotle's father was a doctor and Aristotle had learned to take notes as a boy. He had been writing all his life, taking notes about things. When Aristotle was his student at the Academy, Plato jokingly used to call him "The Scribbler."

In his later years, though Aristotle gave up publishing, he kept notes of the questions he was asking and where he had gotten in trying to answer them. He kept notes about what he had seen and what he had said about it and how he had analyzed what he had seen and what he had said. These notes were not written for an audience. Aristotle kept them for himself. He does not have a "philosophy" and in his notes, he was not trying to teach us any answers. He was just keeping notes of what he was learning.

I make a great deal of the fact that a man who had published successfully when he was in his 30s did not publish anything after he was 49, the age, incidentally, at which he said a man reached the height of his intellectual powers.⁹⁵ My way of putting this, my assertion that Aristotle did not have a "philosophy," is a little odd, but other scholars say almost the same thing with a good deal less oddness. One, for instance, says, that Aristotle's philosophy "is in various ways 'open,' and not a closed set of doctrines."

This scholar wonders "Why is Aristotle always credited with 'doctrines'...?" and says one reason is that his

works were studied for a long time as if they really did contain a set of authoritative doctrines. His 'treatises' or 'teachings' were regarded as the last word. Students were not encouraged to appraise them critically, but simply to learn and accept the truths they undoubtedly contain.

In fact, an account of Aristotle's philosophy as a set of doctrines must be terribly misleading. ... Aristotle's whole approach to philosophy is open and argumentative, and not

⁹⁵ *Rhetoric*, II. xiv, 1390b 11.

dogmatic; he claims to proceed – and to a large extent he does proceed – by raising questions, laying out problems, and trying out possible answers or strategies.⁹⁶

This scholar allows that “Aristotle often adopts a headmaster’s style, and speaks with assurance as if on the matter in hand final truth has been achieved...”⁹⁷

But through most of his work there also rings, more or less loudly, the note of caution and questioning; much remains obscure or uncertain, the answers to one set of problems throw up new ones, on important issues arguments may seem evenly balanced.⁹⁸

This scholar can bring himself to say Aristotle does not have “doctrines” and does not write “treatises” but he cannot bring himself to say Aristotle does not have a “philosophy.” Another scholar speaks of what Aristotle left us as “what might be called the articulated skeleton of his thought.”⁹⁹ This scholar means that Aristotle does not have a fleshed out “philosophy,” but I don’t think there is even a skeleton of one. Aristotle talks about a great many different things and recognizes that there are common threads in the way he looks at things, but there is no rigid “skeleton of thought.” In his works, Aristotle speculates about things, he muses about them. He does not come to definite conclusions, indeed, the most characteristic phrase in Aristotle is “on the one hand so on the other hand not so.”¹⁰⁰

The idea that because he was a philosopher Aristotle must have had a “philosophy” has caused no end of problems for scholars. Because no “philosophy” can be found in Aristotle’s works, one scholar has even been

⁹⁶ J.L. Ackrill, *Aristotle the Philosopher*, (Oxford, 1981) p.1

⁹⁷ J.L. Ackrill, *Aristotle the Philosopher*, (Oxford, 1981) p. 2. Ackrill’s quote continues “... and certainly he has an *ideal* of final and comprehensive philosophical understanding of the world.” I don’t know where Ackrill finds this *ideal* or why it is in italics, but I don’t see this in Aristotle; indeed, it is precisely what I don’t see in Aristotle. Aristotle does not worry about where he is going or whether he’s going anywhere and certainly not about whether it will be *ideal* if and when he gets somewhere. The idea that something can be *ideal* is platonic not aristotelian.

⁹⁸ J.L. Ackrill, *Aristotle the Philosopher*, (Oxford, 1981) p. 2.

⁹⁹ J.A.K. Thomson, *The Ethics of Aristotle*, (Penguin, 1953) p. 16.

¹⁰⁰ *Metaphysics*, XII. iv, 1070b 12.

like we say it is on the one hand so it is on the other hand so not
ê hôsper legomen esti men hôs esti d’ hôs ou

driven to say Aristotle had two philosophies¹⁰¹ and many, if not most scholars say Aristotle never completely gave up Plato's philosophy. He kept it, they say, whether he knew it or not. He kept it almost despite himself. Thus, one scholar says "It was Plato acknowledged or unacknowledged who inspired all that was best in the thought of his great disciple."¹⁰² Another scholar says Aristotle was "permanently influenced by Plato's vision of life in the realm of Ideas."¹⁰³ And finally, one scholar says that "in Plato's philosophy" Aristotle

found the master-influence of his life. It is impossible that so powerful a mind should accept all Plato's doctrines. Grave differences on important points became gradually more apparent to Aristotle. But of his philosophical, in distinction from his scientific, works there is no page that does not bear the impress of Platonism.¹⁰⁴

In Roman times, scholars took this idea so far, that they actually read Aristotle and Plato as if they were harmonious.¹⁰⁵

Few scholars today would say Aristotle and Plato are harmonious, but many scholars will still tell you that you cannot understand what Aristotle says without understanding Plato's philosophy. This, like everything everyone says, is on the one hand true, on the other hand false. It is true because knowing what a person chooses not to say – what a person once said but does not say anymore – can influence your understanding of what that person says; it is false, because you do not have to know what a person used to say to understand what they are saying.

You do not have to understand Plato's philosophy to understand what Aristotle says. You do not have to understand *any* philosophy to understand what Aristotle says. You just have to want to do philosophy, you have to want to look at things and think about them for the pleasure of doing so.

¹⁰¹ D. W. Graham, *Aristotle's Two Systems* (Oxford, 1987)

¹⁰² H. Tredennick, *Metaphysics* (Harvard, 1936) Introduction, p. xxx.

¹⁰³ P.H. Wickstead, *Physics* (Harvard, 1929) Introduction, p. xlv.

¹⁰⁴ D. Ross, *Aristotle* (Methuen, 1923) p. 2.

¹⁰⁵ Sorabji (ed.), *Aristotle Transformed* (London, Duckworth, 1990) p. 4-6. We will see one consequence of this in Chapter IV.

A. Aristotle's Life

Aristotle was born in 384, B.C. He is said to have come from Stagira, a small city, in the northeast of Greece near the border with Macedonia but Aristotle may actually have been born in Macedonia, because his father, Nicomachus, was the physician at the court of Amyntas III, the king of Macedonia.¹⁰⁶ We do not know the status of a court physician but Nicomachus was also said to be the friend and advisor of Amyntas and he certainly took himself seriously as a professional. He and Aristotle's mother, Phaestis, always said they were Asclepiads, descendants of the legendary Greek physician, Asclepius, who was said to have lived 400 years earlier in the time of Homer.

Aristotle was born into a family with a hereditary calling. If Nicomachus had not died when his son was young, Aristotle would never have become the Aristotle we know. He would have followed his father into his family's profession. Nicomachus would have trained Aristotle to be a physician, as Nicomachus had been trained by his father. Back then, this is the way knowledge was transmitted. Masters taught apprentices, typically fathers taught sons. When Nicomachus died, Aristotle's medical career died with him, but we don't know how old Aristotle was when Nicomachus died and the training of the sons of fathers with hereditary callings began early. This would have been especially true with a little boy as smart as Aristotle must have been.

Since all we know about Nicomachus' death is that it happened before Aristotle was seventeen, it is most likely that Aristotle had already started his training. How would this training have begun? Perhaps the first things a prospective doctor must see are surgery and death. Perhaps not. Perhaps that comes later. Another possible way to start the training of a physician would be with some science, some basic observation and classification.

Aristotle's works are surprisingly detailed about small sea creatures. He knows them intimately. Perhaps Aristotle's boyhood training as a physician began in the tidal pools around Amyntas's palace. Perhaps Aristotle made collections of the creatures he saw, putting all the red things

¹⁰⁶ Amyntas is referred to by Chroust as Amyntas III and by Ross as Amyntas II. Because I rely very heavily on Chroust, I have used Amyntas III. I do not think anything turns on this.

with six legs in one pool, all the green things with two claws in another, all the slimy yellow oozer in a third. Perhaps Nicomachus taught him to keep notes of what he observed, notes of the categories into which he divided the sea creatures. We do not know about any of this but it might explain the way Aristotle came to do philosophy when he was an older man.

What we do know is that instead of being trained as a physician, when he was 17, Aristotle was taken to Athens and enrolled in Plato's Academy. This event was obviously central in Aristotle's life, but before we look at it, we must go back and notice one other thing that happened in Aristotle's childhood. When Aristotle was a year or two old, Amyntas's wife gave birth to their third child, a son named Philip. One can almost imagine Aristotle and Philip playing together on the palace floor and it would be fitting if they had played together as children because Philip, later King of Macedonia, and his son, Alexander the Great, played a tremendous role in Aristotle's later life. They dominated Aristotle's relationship with Athens.

Aristotle was not from Athens, but he lived there for two extended periods. His first stay was for 20 years; his second for 12. Since he only lived to be 62, the 32 years Aristotle spent in Athens represent more than half of his life and more important, it was during his second stay in Athens that Aristotle kept the notes we call his "Works." A modern biographer says Aristotle's second stay in Athens, the 12 year period near the end of his life, "traditionally has been referred to as his *Meisterjahre*," his master years, "the years in which he is said to have produced his greatest systematic works."¹⁰⁷

Athens was central in Aristotle's life, as it was in the life of Plato and of Socrates before him, but unlike Socrates and Plato, Aristotle was not an Athenian. He was what the Athenians called a "*metic*," *met' ick*¹⁰⁸ – a resident alien, allowed to live in Athens. Because he was not a citizen, Aristotle could not participate in Athenian democracy and it is ironic that Aristotle's detachment from the time consuming tasks of Athenian citizenship allowed him to reflect on it more than anyone else. Most of what we know about Athenian democracy comes from Aristotle's

¹⁰⁷ A-H. Chroust, *Aristotle*, (London, 1973) Vol I, p. xii. I rely heavily on Chroust for Aristotle's life but disagree strongly with him about Aristotle's works being "systematic."

¹⁰⁸ "Metic" is treated as if it were a Greek word, but it is a latinization of *μέτοικος*, "out of the house."

*Constitution of Athens*¹⁰⁹ and much of what Aristotle says about law in *Politics* is based on Athenian law (see Chapter V).

Athens was central in Aristotle's life and Philip and Alexander were central in Aristotle's relationship to Athens. Aside from 384 and 322 B.C., the years of Aristotle's birth and death respectively, we only know four important dates in his life: 367, when he first came to Athens; 347, when he left Athens; 335, when he returned to Athens; and 323, when he left Athens a second time. Philip and Alexander are definitely involved in the last three events and their family may have been involved in the first one.

367 B.C., Aristotle comes to Athens

Chroust, the modern biographer mentioned earlier, says

King Amyntas III, the friend of Aristotle's father, died in 370-69 B.C. He was succeeded by his oldest son, Alexander II, who was murdered by his uncle, Ptolemy of Alorus, in 369 B.C. Ptolemy proclaimed himself regent, ruling Macedonia in the name of Perdiccas and Philip, the younger brothers of Alexander II. Ptolemy in turn was slain in 365 B.C. by Perdiccas, who made himself king. Approximately five years before his death, King Amyntas III had concluded an alliance with Athens. Amyntas supported the Athenian policy in Thrace, while Athens abetted Macedonia's policy in Thessaly. Ptolemy, who had become regent of Macedonia thanks to the support of Athens (Iphicrates) initially leaned on Athens. But in 368 B.C., as a result of the second Theban invasion of Thessaly, under Pelopidas, he switched his allegiance and declared himself for Thebes. In the year 365 B.C., thanks to the assistance by Athens, Perdiccas removed Ptolemy and declared himself for Athens. He maintained his allegiance with Athens until 362 B.C., when, after the battle of Mantinea, he shifted his allegiance and allied himself once more with Thebes against Athens. When Perdiccas was slain in battle fighting against the

¹⁰⁹ The *Constitution of Athens* describes the history of Athenian legal institutions but I do not discuss it much in this book. I am interested in what Aristotle says about law and the *Constitution of Athens* is not about law; it is about the law of Athens.

Illyrians in 359 B.C., his son Amyntas was a mere child, his uncle Philip assumed the regency. Philip, the astute diplomatist, soon came to terms with Athens.

It is not unreasonable to assume that Aristotle's family remained loyal to the legitimate heir or heirs of Amyntas III (Alexander II, Perdiccas, and Philip). During the regency of Ptolemy and the fierce interdynastic struggles which convulsed Macedonia at the time, Aristotle might have taken political refuge in Athens (his immediate family probably belonged to the pro-Athenian faction in Macedonia) in order to escape persecution by the regent who after 368 B.C. allied himself with Thebes, the enemy of Athens, and who probably tried to exterminate all persons whom he suspected to be friends and supporters of Amyntas III, Alexander II and Perdiccas. It is also possible that Aristotle's father, Nicomachus, was killed during these bloody interdynastic struggles. In any event, by the time Aristotle went to Athens in 367 B.C., Nicomachus, the personal physician, friend, advisor and we must assume, the partisan of Amyntas III and his family, was dead (as was probably Aristotle's mother, Phaestis).¹¹⁰

Notice that, despite all the detail and particularity in these comments, they are strikingly hypothetical. On the one hand we know a lot about Aristotle's life and times; on the other hand we don't know very much at all. There are a surprisingly large number of ancient biographies of Aristotle (Aristotelian *Vitae*). They were written over several centuries in Greek, Latin, Syriac, and Arabic. As Chroust explains, they all seem to derive from two biographies that may have been written within 100 years after Aristotle's death. These two no longer exist and had ceased to exist even before the later biographies were written. The ancient biographies of Aristotle that we do have were based on reports about what the first ones said. They vary widely, depending on whether the author was trying to make Aristotle look good or bad and what the author meant by "good" or "bad."

¹¹⁰ A-H. Chroust, *Aristotle*, (London, 1973) Vol I, p. 95-6.

Chroust admits that “Many of my discussions consist of ‘educated guesses’ and what appear to be reasonable conjectures or hypotheses”¹¹¹ and also says,

In the light of the available evidence, which is both scanty and conflicting the exact details and the particular circumstances surrounding Aristotle’s entry into the Platonic Academy are not fully known and may never be fully known.¹¹²

Let us say, therefore, that Aristotle started at Plato’s Academy in 367 B.C. when he was 17. This allows us to say what everyone else has said since ancient times, that Aristotle stayed at the Academy for 20 years.

347 B.C., Aristotle leaves Athens

In 347 B.C., at the age of 81, Plato died. Aristotle left the Academy and Athens. He may well have left in a huff because Plato did not appoint him scholarch, or head scholar of the Academy. In his will, Plato made Speusippus scholarch and Aristotle may well have been miffed at being passed over.¹¹³ By rights the position should have been his. He had been at the Academy for 20 years, first as a student, then as Plato’s colleague. He had taught at the school and published successful dialogues of his own. Plato is said to have referred to him as the *nous* of the Academy, the brain of the school.

And yet, in his will, Plato named Speusippus to be scholarch. Some say this was not personal; they point out that legally Aristotle could not be scholarch. The title to the buildings of the Academy was in the name of the scholarch and since Aristotle was not an Athenian, he could not own land in the city. Moreover, by custom Plato, who had no children, was supposed to make a will leaving his property to someone in his family, and Speusippus was Plato’s nephew.

Surely even back then, there were ways to get around legal technicalities and even if there were none, even if Aristotle knew he could

¹¹¹ A-H. Chroust, *Aristotle*, (London, 1973) Vol I, p. x

¹¹² A-H. Chroust, *Aristotle*, (London, 1973) Vol I, p 102

¹¹³ I have heard it said that Plato did not make Aristotle scholarch because Aristotle disagreed so much with him at the end of their 20 years together. Chroust does not even advert to this possibility so I treat it as an urban legend.

not become scholarch because of legal technicalities and family ties, that would not necessarily have made it easier for him to accept. Indeed, it might actually have made it harder.

Chroust suggests that Aristotle may actually have left Athens in 348 B.C., the year before Plato died.

In the year 349 B.C. King Philip of Macedonia began to subdue the Greek cities in Chalcidice. In order to escape capture and possible destruction by the Macedonians, the city of Olynthus entered into a defensive alliance with Athens. When the city was threatened by the approaching Macedonian army, an Athenian relief force was promptly dispatched. But the aid arrived too late to prevent the storming and ravaging of Olynthus in the summer of 348 B.C.¹¹⁴

If Aristotle left Athens when Olynthus fell in 348 B.C., then Plato's death would have had nothing to do with his leaving, and of course, even if Aristotle left Athens in the year Plato died, the two events could be, as Aristotle says so often about others things, *συμβεβηκός*, *sim ba'by koss*. They might together-walk, they might coincide, but their coincidence would not mean anything. It would be just a coincidence. Right around the time Aristotle left Athens, Athens and Macedonia had moved to the brink of war. Aristotle, who was always regarded as a Macedonian, was living in Athens at the mercy of the democratic Athenian citizenry. He may have left Athens when he did, not because Plato died, but because he had to leave. As we will see, the second time Aristotle left Athens, he fled for his life.

335 B.C., Aristotle returns to Athens

What Aristotle did in the 12 or 13 years between 348-7 and 335 B.C. is not clear. We know that for a time he went across the Aegean and lived in a pair of *polisses*, Assos and Atarneus, that were ruled by a tyrant named Hermeias, whom Aristotle knew from the Academy. While he was with Hermeias, Aristotle married a woman named Pythias. She was somehow related to Hermeias. We also know that shortly before Aristotle returned to Athens in 335 B.C., he and Pythias had a daughter. She was named after her mother.

¹¹⁴ A-H. Chroust, *Aristotle*, (London, 1973) Vol I, p. 121

Other than these details we know almost nothing about Aristotle's time away from Athens. We know he did not stay the whole 12 years with Hermeias and some say that for at least part of the time, he went back to Macedonia. Many even say that at Philip's request, Aristotle returned to the king's palace and became the tutor of Alexander. This story is very well known and repeated by scholars of great authority, for instance, J.A.K. Thomson, who is very romantic about it.

Then something happened in the quiet existence of Aristotle with which all the world is familiar. He was invited to become what people call the 'tutor' of the boy who became Alexander the Great. The invitation came from Alexander's father, the famous 'Philip of Macedon', and the reasons for it are not perfectly clear. If he knew Aristotle personally at all it must have been on very slight acquaintance. True, Aristotle was the son of Nicomachus, and that would be a recommendation. No doubt too, Philip, who was dipped if not imbued in culture, would hear of Aristotle as a man of high character and extraordinary powers of mind. It may have been such considerations that influenced Philip to give the invitation. But what made Aristotle accept it? He must have known that he would hate living at the Macedonian court with its murderous intrigues and orgies of drunkenness; he never mentions such places without strong expressions of disapproval and distaste. The question, however, admits of an almost certain answer. Aristotle accepted the proposal because in this respect at least he was a good Platonist. Plato had said that there would be no very good government until philosophers were kings or kings philosophers. If then the opportunity came to a philosopher of guiding the policy of a state, either directly or by instructing a young prince, he could not in conscience reject it. ... Accordingly in 342 B.C. we find him at the Macedonian court. A legend was born and Aristotle came to be thought of as he

who bred
Great Alexander to subdue the world¹¹⁵

¹¹⁵ *The Ethics of Aristotle*, (Penguin, 1953) p. 11. The quote is from Milton's *Paradise Regained*.

With Chroust, I think this story is too good to be true. As Thomson himself says, “a *legend* was born.”

We don't know what Aristotle did while he was away from Athens between 348-7 and 335 B.C., but we know two things about his return. First, we know that when he came back Aristotle had made a decision not to publish anymore. We know this because he never published anything again and this obviously reflects a decision. Perhaps, when he was up north, Aristotle went back to his boyhood training. Perhaps he spent time in the tidal pools, watching the creatures and keeping notes. Given what he did later, that would make sense, but we don't know.

The second thing we know about Aristotle's return to Athens in 335 B.C. is even more closely tied to Philip and Alexander than his leaving.

In order to better understand the particular circumstances surrounding Aristotle's return to Athens in the year 335-34 B.C., it might be helpful to review briefly Greek and Macedonian history in the years 336 and 335 B.C. Philip of Macedonia was assassinated in the summer of 336 B.C. He was succeeded, though not without some serious difficulties, by his son Alexander, who at once found himself threatened on all sides by foes and rivals. In Macedonia, Attalus and his followers claimed the throne for the infant son of Cleopatra the niece (and ward of Attalus and the second wife of Philip) others supported the bid of Amyntas, the son of Perdiccas and former 'ward' of Philip. With a boldness and speed that bordered on madness, Alexander immediately brought Macedonia back in line. Attalus, Amyntas, and later Cleopatra and her infant, as well as some of the conspirators were simply removed from the scene through execution or outright murder.¹¹⁶ Greece, which on the news of Philip's sudden death had revolted against Macedonia, was frightened into quick submission by a speedy show of force. Philip the founder of the League of Corinth (of 338 B.C.), did not live long enough to consolidate the League, which had been forced upon the Greek states after the battle of Chaeronea. When the news of Philip's assassination reached the Greeks, they regarded all previous agreements and alliance

¹¹⁶ What is the difference between these two? Are they contraries?

with Macedonia as terminated. The vast majority of the Greek states rejoiced over the death of Philip, believing that this event would once and for all spell the end of Macedonian rule. Demosthenes, who in all matters concerning Macedonia often allowed wishful thinking to control his judgment, actually reported to the general assembly in Athens that the city had nothing to fear from so young and inexperienced a boy as Alexander. ...¹¹⁷

Demosthenes was wrong. Alexander's generalship was characterized by a mad impetuosity. Throughout his short, brilliant career, whenever he faced a problem, Alexander marshaled an army, fought a battle and won it brilliantly. Chroust says: "Completely unprepared to offer Alexander any effective resistance, all of Greece, except Sparta, submitted quickly and rather meekly." The King of Persia, hoping to stall Alexander's planned invasion of Asia, sent money and agents to stir up the Greek cities.

Suddenly the rumor was passed around that Alexander had been slain in battle Demosthenes, blinded by his furious hatred of Macedonia, actually produced a man who allegedly had witnessed the death of the king. Once more some of the Greek states raised the banner of revolt, calling for the end of Macedonian domination. Apparently out of nowhere Alexander suddenly appeared, descending upon Greece with lightning-like speed. In a spirit of desperate heroism, Thebes hoped to defy the military might of the enraged king and was immediately put under siege. After a brief struggle, the city was stormed and razed. ... The news of the Theban disaster reached Athens during the Eleusinian festival. An emergency meeting was called at once, and on the initiative of Demades a special resolution was made by the very men who, on the motion of Demosthenes, only a few days before had wildly clamored for the annihilation of Macedonia. They decided to send an embassy to Alexander congratulating him on his success at Thebes and praising him for his just punishment of the treacherous Thebans. Alexander, who had his agents everywhere, knew only too well that the recent uprisings had actually been planned and supported by Athens, and that the

¹¹⁷ A-H. Chroust, *Aristotle*, (London, 1973) Vol I, p. 133-4

Athenians had actively aided and abetted Thebes. Nevertheless, he accepted the submission of the Athenians.¹¹⁸

Chroust says Alexander treated the Athenians more gently than the Thebans because Aristotle interceded on their behalf. One of the major claims in Chroust's biography is that Aristotle was a political associate of Philip and Alexander. Whether this is true or not, one thing is certain: Aristotle "returned ... to Athens in the van of the conquering Macedonian phalanx."¹¹⁹

Athens remained a separate *polis*, under Alexander's sway, and Plato's school, the Academy, was still going. (It would continue for 800 years, till it was closed by the Emperor Justinian in 529 A.D.) Some say that in 335 B.C., when he returned to Athens, Aristotle was offered the scholarchate at the Academy or at least some part of it. If he was, he did not accept. Aristotle had had enough of the Academy. He established his own school, the Lyceum, and kept the notes we know as "The Works of Aristotle."

...in 335-4 B.C. Aristotle for a second time made Athens his permanent abode. But in the eyes of the vast majority of Athenians, he returned, or was brought back, to Athens in the van of the conquering Macedonian phalanx A great many Athenians, among them rabid patriots as well as plain xenophobes, after 335-4 B.C. genuinely hated and feared Aristotle. ...the majority of his Athenian contemporaries ... saw in him the pernicious instrument of Macedonian tyranny and oppression. ... It might be maintained, therefore, that the years between 335-4 and 323 B.C., allegedly the years of Aristotle's greatest and most important philosophic productivity, probably were not the most pleasant years in the life of the Stagerite.¹²⁰

323 B.C., Aristotle leaves Athens a second time

On 13 June, 323 B.C., Alexander the Great died in Babylon. Though he was only 27 years old, he had conquered much of the world. When the

¹¹⁸ A-H. Chroust, *Aristotle*, (London, 1973) Vol I, p. 135-6

¹¹⁹ A-H. Chroust, *Aristotle*, (London, 1973) Vol I, p. 141.

¹²⁰ A-H. Chroust, *Aristotle*, (London, 1973) Vol I, p. 141-2

news of Alexander's death reached Athens, the Athenians revolted. Antipater, Alexander's regent for Greece, had gone to Persia to meet with Alexander. For a time, therefore, there was no one to put down the revolt, but it did not take long for Antipater to return and reestablish Macedonian supremacy.

In the short period during which the Athenians felt themselves free from the Macedonian yoke, Aristotle was indicted for "impiety." The Athenians said he was a spy for the Macedonians. There may have been some truth to this charge; Aristotle and Antipater were friends and kept up a correspondence. But truth was not the issue in the democratic Athenian courts. With their juries of 500 or 1000, popular sentiment was much more important than truth and Aristotle fled. As he left Athens in 323 B.C., Aristotle is reported to have said that he would not allow the Athenian citizens to commit a second injustice against philosophy. This is a reference to Socrates.¹²¹ We will discuss the trial of Socrates in some detail later. Here it is enough to say that in 399 B.C., 75 years before Aristotle was charged with impiety, Socrates had been convicted and sentenced to death on the same charge.

Perhaps Aristotle could have returned safely to Athens once Antipater had put down the Athenian revolt. He did not. He died a year later on the island of Euboia, in Chalcis, the city from which his mother had come.

B. Aristotle's Works

To give readers who are not familiar with Aristotle's works some idea of the amazing number of different subjects in them, I reproduce the traditional list. When scholars refer to passages in these works, they do so by citing what is called the "Bekker numbers." These numbers indicate the page, column and line number of the passage in the complete Greek texts published in 1837 by the Prussian Academy of Sciences under the editorship of Immanuel Bekker. In the following list of Aristotle's works, the Bekker numbers are indicated and so is the number of Bekker pages to indicate the relative length of each work.

1a *Categories* (15)

¹²¹ And perhaps to Anaxagoras, a pre-Socratic philosopher who was also convicted and sentenced to death in the Athenian courts.

- 16a *About Translating* (usually called *On Interpretation*) (8)
 24a *Prior Analytics* (47)
 71a *Posterior Analytics* (29)
 100b *Topics* (64)
 164a *Sophistical Refutations* (20)
 184a *Physics* (84)
 268a *On the Heavens* (46)
 314a *On Coming into Being and Going out of Being* (24)
 338a *Meteorology* (53)
 391a *On the Cosmos* (11)
 402a *About Living* (usually called *On the Soul* or *De Anima*) (34)
 436a *On Natural Things* (usually called *Parva Naturalia*) (50)
 436a *On Sensation and Sensible Things* (13)
 449b *On Memory and Recall* (4)
 453b *On Being Asleep and Being Awake* (5)
 458a *On Dreams* (4)
 462a *On Prophecy in Sleep* (2)
 464b *On Long Life and Short Life* (3)
 467b *On Youth and Old Age; On Life and Death* (3)
 470b *On Breathing* (9)
 481a *On Breath* (5)
 486a *Inquiry into Animals* (usually called *History of Animals*) (153)
 639a *On the Parts of Animals* (59)
 698a *On the Movement of Animals* (6)
 704a *On the Travel of Animals* (11)
 715a *On the Coming into Being of Animals* (76)
 791a *On Colours* (9)
 800a *On What is Heard* (5)
 805a *On Physiognomics* (10)
 815a *On Plants* (15)
 830a *On Amazing Things Heard* (17)
 847a *Mechanics* (12)
 859a *Problemata or Problems* (109)
 968a *On Indivisible Lines* (5)
 973a *The Situations and Names of Winds* (1)
 974a *On Melissus* (3)
 977a *On Xenophanes* (2)
 979a *On Gorgias* (1)
 980a *Metaphysics* (101)
 1181a *Big Ethics* (usually called *Magna Moralia*) (13)

- 1094a *Nicomachean Ethics* (120)
 1214a *Eudemian Ethics* (35)
 1249a *Virtues and Vices* (3)
 1252a *Politics* (81)
 1343a *Economics* (11)
 1354a *Rhetoric* (66)
 1420a *Rhetoric for Alexander* (27)
 1447a *Poetics* (15)
 Constitution of Athens

A few comments must be made about this list. First, the *Constitution of Athens* does not have a Bekker number because it wasn't found until after Bekker had published his compilation. It is about 24 Bekker pages in length. Second, notice how much of Aristotle's works is about animals. Third, there is an organization: the logical works come first. They are called the "*Organon*." This means "tool" and these works have come first since ancient times. This order is not something Aristotle created. It was created by scholars long after his death.

The Translation movement of ninth-century Baghdad created the conditions for a revival of philosophic scholarship. Al-Farabi and his contemporaries founded an Arabic school of philosophy. In restoring the late Greek curriculum they clearly were guided by the Alexandrian [Roman, 100-200 A.D.] *prolegomena* literature. They put logic first; they studied the books of Aristotle's *Organon* in the traditional order....¹²²

One final thing to note. Some scholars say some of these works are not by Aristotle. We will discuss one of these so called "pseudo-Aristotelian" works in a moment, but notice that even if some titles were removed, the list would still be quite impressive. Aristotle did a lot of philosophy during his second stay in Athens. He looked at a lot of different *phainomena*.

¹²² F. W. Zimmerman, *Al-Farabi's Commentary and Short Treatise on Aristotle's De Interpretatione* (1981) p. xxiii.

Plato and the Works of Aristotle

What we call “The Works of Aristotle” were all written in Aristotle’s second period in Athens. There are some passages in his works that have not yet been understood. No one can figure out exactly what he is saying.¹²³ Scholars say that to understand Aristotle, you must understand Plato’s philosophy, but understanding Plato’s philosophy would not explain these passages. To understand what Aristotle says in his works it is not necessary to understand the philosophy of Plato or anyone else. Some knowledge about earlier philosophers can deepen one’s understanding of what Aristotle says, but no knowledge of philosophy is necessary and in any case, knowing a little bit about Parmenides, Heraclitus, Pythagoras and Socrates can take one a lot further than knowing a great deal about Plato.

When Aristotle came back from his 12 years up north, he was a changed man. This was manifested most dramatically in the way he worked. I have not seen anyone else comment on the fact that the first time he was in Athens, when he was with Plato at the Academy, Aristotle published things he wrote, but the second time he was in Athens, running his own school, Aristotle did not publish anything. Everyone knows this fact, but no one says anything about it.

None of the notebooks we call “The Works of Aristotle” were ever published by Aristotle. The first time they were published was around 200 years after Aristotle’s death.¹²⁴ The story of how these notebooks came to be published is on the one hand fascinating, on the other hand largely unknown. Aristotle kept his own notebooks. When he died, these notebooks passed into the hands of his best student and when that student died, they went on to his best student.¹²⁵ Somewhere along the line, they disappeared. Scholars disagree about how and when they were found. Around the middle of the first century B.C.,¹²⁶ 200 years after Aristotle died, Roman soldiers found a cache of rolled up documents buried in the

¹²³ I think particularly of Book III of *Peri Psyche, About Living (On The Soul or De Anima)* and Book M of *Metaphysics*.

¹²⁴ The most important works of F. de Saussure, the French linguist, were not published in his lifetime.

¹²⁵ This practice was current for medical books in China until quite recently.

¹²⁶ No one knows exactly when or where. Chroust p. xiv. In the Introduction to his translation of *Ethics*, Thomson gives a long and detailed account of the finding of Aristotle’s Works. *The Ethics of Aristotle*, (Penguin, 1953) p. 13-16. Thomson’s Introduction is excellent and very romantic. He says for instance:

And that is not the whole story. Hermeias had a niece and adopted daughter called Pythias. Aristotle and she fell in love and they were married. p. 10.

I do not think we know nearly as much about Aristotle as Thomson thinks we do.

foundation wall of a small house on a small island. The Roman legionaries had orders to send any writing they found back to Rome and they duly sent Aristotle's notebooks back to Rome.

Scholars have been studying them ever since and there is some disagreement about the authenticity of various works. For instance, in his book on Athenian democracy, D. Stockton says,

I have perforce to refer frequently to the *Constitution of Athens* (*Athenaion Politeia*), a work ascribed in antiquity to Aristotle. Some moderns are prepared to accept it as a genuine work from that master's pen; but I align myself firmly alongside those who cannot accept it as a product of Aristotle's rare genius, and attribute it instead to a much less gifted pupil.¹²⁷

Like most scholars who study Aristotle, Stockton thinks he can recognize what was written by Aristotle on the basis of the quality of the work. On this basis, I challenge the recent opinion that the book known as *Problemata* or *Problems* is not by Aristotle. Long ago, this work was thought of as quite important, but it has now been downgraded to "pseudo-Aristotelian." A standard modern edition of Aristotle's *Problemata* begins with this disclaimer or caveat.

¹²⁷ *The Classical Athenian Democracy* (Oxford: Oxford University Press, 1990) p.2

I agree with Stockton but resist the urge to deflate the authority of the *Constitution of Athens* too far. Ancient sources tell us that Aristotle wrote the constitutions of 158 Greek *polisses*. It seems obvious that he could not have written them all by himself. Instead, it seems most likely that he "wrote" the 158 constitutions together with his students, but Athens was, if not the most important Greek *polis*, at least one of the most important and Aristotle spent half his life there. Is it imaginable that Aristotle assigned the writing of the *Constitution of Athens* to a bad student, or that he left the work completely unsupervised?

Stockton says, "it is enough that the reader should be warned that this work cannot be assumed to carry Aristotle's unquestionable authority" (p. 3). The *Constitution of Athens* may not have "Aristotle's unquestionable authority," but I think it is significant that, of the 158 constitutions written by Aristotle and his students, only *The Constitution of Athens* has survived. The other 157 have all been lost. *The Constitution of Athens* was itself lost until the late nineteenth century. In 1880, fragments of it were discovered in the sands of Egypt; ten years later an almost complete text was unearthed in the British Museum.

It may be an accident that the only one of the 158 constitutions to have resurfaced is the *Constitution of Athens*, but as Aristotle tells us in *Physics*, accident is a kind of cause (198a 5). If you see someone in the street who owes you money, you say you met that person by accident. Other people you see in the street you do not speak of meeting "by accident" or even of "meeting." (196b 33 to 197a 4) To speak in terms of "accident," Aristotle says, reflects a sense of meaning. If the constitution of some little, otherwise unknown Greek city had been the only one to survive, we would not say it had survived "by accident." We would simply say it had survived. We say the *Constitution of Athens* survived "by chance" because we find its survival significant.

There can be no doubt that Aristotle is not the author of the *Problems* as they come down to us.¹²⁸

This is on the one hand true, on the other hand false. Aristotle's *Problemata* have come down to us as a book of questions with answers. Aristotle did not write the answers, but he did write the questions. The answers are the work of a student. What we have in *Problemata* is a student's filled-in copy of Aristotle's book of questions. The answers are an attempt to be "aristotelian." They are turgid. The questions are brilliant. No one but Aristotle could have written them. There are hundreds of questions about many different *phainomena*.

Why do great excesses make people sick?

Why do camels yawn in sympathy when other camels yawn?

Why do young men, when they first have sex, feel disgust for their partners?

Why is sweat salty?

Why does everything seem to go in circles to those who are very drunk?

Why does sex feel good? Is that the way it has to be for animals or is there some other reason for it?

Why is it more tiring for the arm to throw empty-handed than to throw a rock?

Why does sitting down make some men fat and other men thin?

Aristotle's *Problemata* is and is not "pseudo-Aristotelian." *Problemata* is a very important work that gives us some insight into what the Lyceum may have been like. Many scholars call Aristotle's works "treatises." Other scholars say this word is too formal and see the works as notes from which Aristotle gave lectures.¹²⁹ So far as I am aware, there is no evidence for the claim that Aristotle gave lectures at the Lyceum. Just as scholars have said Aristotle must have had a "philosophy" because he was a

¹²⁸ W.S. Hett, (Cambridge, Ma.: Harvard University Press, 1936) p. vii.

¹²⁹ E.g. Thomson, *The Ethics of Aristotle*, (Penguin, 1953) p. 13.

philosopher, so they have said that he must have given lectures, because he ran a school.¹³⁰

When he was up north, Aristotle may have gone back to looking in the tidal pools – to seeing things and saying what he saw. He came back to Athens because he wanted to expand the scope of his research. To do that, he needed people to work with, smart people, the smartest he could find, and more than he could hope to find up north. Just as he “had” to leave Athens, so Aristotle “had” to come back.¹³¹ Athens was the center of the civilized world. Aristotle came back to Athens and set up the Lyceum so that he would have people to ask him questions. In return, he asked them questions. This was the method of the Lyceum and it was called “peripatetic,” which means precisely, moving around. Plutarch, a Greek who wrote in Roman times, says Aristotle’s method was called “peripatetic” either because the Lyceum was in a place where people had once moved around for exercise or because Aristotle and his students moved around as they disputed or both. Perhaps Aristotle’s school was called “peripatetic” because Aristotle and his students moved from question to question in their studies, going off on nothing but tangents.

Questions, not lectures, were the medium of Aristotle’s teaching. A student would answer a *problema* and then the answer would be subjected to scrutiny. It would be torn apart from every possible angle. Good bad arguments were encouraged. Aristotle says practicing good bad arguments with others helps a philosopher argue with himself.¹³²

In the course of the many arguments he heard about the many questions he posed about the many *phainomena* that could be seen, Aristotle heard observations he liked or had ideas of his own about how to say what could be seen. He wrote them down, or perhaps he had someone else write them down, maybe a slave, or even several slaves. Perhaps he would say to one slave, take that down for the notes on *Politics*, or put this in the notes on *Physics*. Some of Aristotle’s works sound as if they were dictated and often in his works, Aristotle gets on a roll. He sees something, says something

¹³⁰ The closest I have seen to a recognition that Aristotle may not have given lectures is in E. Barker, *The Politics of Aristotle*, (Oxford, 1946). “[T]he actual lectures may have been more in the nature of discussion with members of the class.” p. xxxv.

¹³¹ These two “had”s are contraries.

¹³² *Sophistical Refutations* XVI., 175a 11.

about it, says something about what he has just said, says something about that and then something about that.

Aristotle jumps around in his works and must have jumped around in his asking questions. What else are we to think? Is it conceivable that Aristotle looked at ethics on Tuesdays and Thursdays from 10:00 to 11:00, animals on Mondays and Wednesdays from 11:00 to 12:00 and metaphysics on Fridays from 3:30 to 5:00? Is it conceivable that he did physics for three months, meteorology for the next three and politics for the three after that? Aristotle must have been peripatetic in his studies. He must have moved from topic to topic, question to question. This stand out in his works. He goes where his observations and what he says about them take him.

Many scholars speak of Aristotle's works as "systematic." This is like speaking of the medieval English legal writs as The Writ "System." The writs were complicated but there was no system to them. What characterized the writs was precisely their lack of system and the same is true for Aristotle. He was systematic in his philosophical practice. He looked at everything the same way and took notes constantly, but that does not make his works "systematic."

Aristotle's works are all of a piece but they are the contrary of systematic. What Aristotle says has all the variety of observation. Aristotle regularly contradicts himself. That is part of his charm. Reading Aristotle is like being with a very smart child. He jumps around. He sees one thing and remarks on it, then he either sees something else and remarks on that or he sees his remark and remarks on that. He can say what he sees because he has no commitment to any "philosophy." If what he sees comes out contradictory, that does not bother him.

Aristotle can follow tangents doggedly, but when he comes to the end of a tangent, he jumps to another observation, which may lead to yet another tangent. Some of his works seem more organized than others. (*Ethics*, for instance, is highly organized. We will talk about this in Chapter IV.) Perhaps Aristotle went over his notes occasionally and organized them. More likely, what organization there is was imposed by others. Scholars have been studying Aristotle's works for 2000 years. They see plainly enough that there is one great mind driving Aristotle's works. This mind sees the same things coming up in different places. There are themes in Aristotle's works: things come into being, things go out of being; things are

potential, things are actual; one part rules, another part is ruled; above all, there is contrarity. In their wish to understand Aristotle, scholars have imposed more organization and system on his works than Aristotle himself imposed. At one time scholars even added phrases to Aristotle's writings and rearranged passages to make his meaning clearer. We will see that modern translations of Aristotle continue this tradition.

There is a lot we do not know about Aristotle's philosophical practice at the Lyceum. Each day might have begun with Aristotle posing a particular *problema* to one student. Perhaps the student was told in advance that it would be his turn that day; perhaps he even knew from what area his *problema* might come. The first 54 *problemata* are all medical. (This seems meaningful rather than *συμβεβηκός* because Aristotle's father was a physician. Nicomachus must have kept notes of his practice. Maybe he passed these notes, complete with the notes of his father and his father before him, on to Aristotle. These could be the basis for many of the questions in *Problemata*.)

The second group of 41 *problemata* is about sweat. The third group is about drinking and getting drunk. The fourth is about sex. We think of the Academy as the model of a university, but the curriculum at the Lyceum may have been closer to the concerns of modern university students. Perhaps these are the concerns young men (and now young women) have everywhere and always.

Problemata manifests the unsystematic nature of Aristotle's philosophical practice better than any other work. It contains questions about getting tired, lying down and standing up, getting cold, having bruises. It contains physical questions and questions that are not physical, at least not in the same way. There are questions about the voice. Why do men hear less when they are yawning? Why does the tongue tremble when people are afraid? Why are humans the only creature to stutter? There are questions about smells. Why do we smell less when it's cold? Why is the armpit the worst smelling place? There are questions about mathematics. Why do all people, barbarians and Greeks, count in tens rather than any other number?

There are questions about living things and non-living things. Why are bubbles hemispheres? Why do things always get round on the edges? There are questions about the love of learning. Why is it that some books put you to sleep against your will while some keep you up against your will?

There are questions about music. Why do people who are sad and people who are happy like to hear music? Why do people get more pleasure from hearing a song they know than a song they don't know? There are questions about plants. Why are some vegetables eaten cooked and others raw? Why do we water plants in the morning, at night or in the evening? Why is it that only onions make your eyes sting? There are questions about bodies of water. Why don't the waves break¹³³ in deep open water but in small bodies or shallow ones?

There are questions about hot water. Why if you put your foot in hot water does it seem less hot if you hold it still and more hot if you move it? There are questions about air and wind, questions about fear and courage. Why do scared people tremble most in their voice, hands, and lower lip? Why when people are afraid do their bowels let go and they pee? There are questions about self-control. Why are there only two senses about which people are said to lack self-control, touch and taste? Why are self-control and good sense especially admired among the young and the rich, but justice especially among the poor? Why do people stifle their laughter less among people they know well?

There are questions about the eyes, the ears, the nose, and the mouth. Why when people get angry do their eyes get especially red, but when they are ashamed, their ears? Why is it that though both those who are short-sighted and those who are old suffer from weakness of vision, the first bring things closer when they want to see them and the second take them further away? There are questions about wisdom. Why from the beginning have there been prizes for physical contests, but none for wisdom? There are questions about touch. Questions about faces. Most importantly for this book, there are questions about justice.

I have given a fair number of questions before turning to those on justice so that the reader will have some idea of the kinds of questions Aristotle posed for his students. Some have answers, some do not. The answers to some seem obvious, the answers to others seem totally hidden. The same is true for the questions about justice. There are 16 of them. I find some more interesting than others, and some I cannot understand at all. I present them without comment.

¹³³ The Greek word ἐπιγελῶ (*eh pee ghe^{to} lo'*) means "sparkle" and "laugh."

1. Why, if an injustice is greater when a greater good is hurt and honour is a thing that is a greater good, are injustices that have to do with money thought to be especially unjust?
2. Why is making off with a deposit worse than making off with a loan?
3. Why in some cases do jurors vote for the relatives rather than for what the will says?
4. Why is there more poverty among good people than bad ones?
5. Why isn't doing a big injustice about money the same as doing a big injustice about something else? A person who would say a small thing might not tell a big secret, a person who would betray one person might not betray the whole *polis*, but a person who would steal an obol would steal a talent.
6. Why is it more shameful to steal a small deposit than a large loan?
7. Why is it that human beings, despite their education are the most unjust animals?
8. Why is wealth to be found more often among those who are fouled up than among those who act properly?
9. Why is it considered more just to help the dead than the living?
10. Why is it that those who hang around with healthy people do not get healthier and those who hang around with strong or beautiful people do not get stronger or more beautiful, but those who hang around with people who are just, sensible, and good, become more just, more sensible and more good?
11. Why is it worse to kill a woman than a man?
12. Why do they give a defendant the position on the right in a trial?
13. Why when the votes for the defendant and the accuser are the same, does the defendant win?
14. Why, if someone steals something at the baths, the gym or the market is the punishment death, but if someone steals something from a house, it is twice the value of what was stolen?
15. Why in a trial if the votes come out equal for the two sides, does the defendant win?
16. Why for theft is the punishment death, but for aggravated assault, which is a bigger injustice, is there an evaluation of what must be suffered or paid?

C. Aristotle's "Philosophy"

Many scholars take *phainomena* to be the most important word in Aristotle's works. Thus, when asked to summarize what Aristotle said, one modern scholar replied "zotsein ta phainomena,"¹³⁴ cling to *phainomena*, and M. Heidegger, who based much of his work on Aristotle's, named his own philosophy "phenomenology." The word "phenomenology" combines *φαινόμενα* with another word that is very important in Aristotle's works, *λόγος*. *Phainomena* are how things appear to us. They are what we see. *Logos* is what we say about what we see.

Many would put *phainomena* first because we seem to see things and then speak about them, but Aristotle says this is not exactly the way it works. Aristotle says "see" means contrary things: on the one hand we see things with our eyes, on the other hand we only see things when we recognize them as things. Aristotle says that with our eyes alone we only see colour. He points out that sight, eyes, and white have a very special relationship, the same relationship that taste, tongue, and sweet have. Aristotle calls this relationship, *ἴδιον*, *i'di'ot on*.¹³⁵

The meaning of *ἴδιον* is quite clear but I don't know how to say it in English. *Idion* means belonging to 1-to-1, personal, private, particular, characteristic, idiosyncratic. The French have a very good word for *idion*, *propre*.¹³⁶ Something that is *propre* belongs to or is proper to something else. That to which something is *propre* is *propre* to it. Sight, eyes, and white are *propre* to each other as tongue, taste and sweet are. You do not see white with anything but your eyes; you do not taste sweet with anything but your tongue, and Aristotle says *propre* perceptions are almost impossible to be mistaken about. "If your eyes see white, there is white."¹³⁷ Where error comes in, Aristotle says, is where perceptions are not *propre*.

¹³⁴ E. Schutrumpf said this to me in conversation. He pronounces Greek with a German accent. With an English accent, we would say "sozein ta phainomena".

¹³⁵ *About Living*, (usually called *De Anima* or *On the Soul*) II.vi 418a 11. This word comes to be our "idiot". An idiot is someone who sees things only from a personal point of view.

¹³⁶ I was first introduced to this french term in B. Cassin, *Aristote et Le Logos*, (Presses Universitaires de France, 1997).

¹³⁷ Aristotle does not say it is impossible to be mistaken about colour; he says it is almost impossible. Notice that almost impossible is a contrary of impossible. Notice also that though almost impossible and possible are both contraries of impossible, they are not the same. They are contraries in different dimensions. In *About Living(De. An.)*, II.iv., 418a 13 and III.iii., 427b 13 Aristotle twice says it is impossible to be wrong about *propre* perceptions.

We see colour with our eyes alone; but we do not see things with our eyes alone. We see things, Aristotle says, by combining colour, movement, and size. (Aristotle calls size “big and small.”) Movement and size are not *proprie* to any one sense. We see movement and size and we feel them. To see things, we have to combine colour, which is *proprie*, with movement and size, which are not *proprie*. Aristotle says we do this with a sixth sense that he calls a “common sense.” This has nothing to do with what we call either a “sixth sense” or “common sense.” Aristotle’s sixth or common sense is just a sense in which the other five senses work together (in common).

With our eyes, we see that our fingers are the same colour as our hands; with our common sense, we see and feel that our fingers move when our hands move and we see and feel that our fingers are smaller than our hands. We put all this together and say our fingers are parts of our hands.¹³⁸ If our fingers were bigger than our hands, we would say our hands were part of our fingers and if our fingers went off by themselves, we would say they were separate things.

One of the first things kids practice is naming their own parts. This is not an easy thing to figure out.¹³⁹ It is very hard to say what belongs to what. It is very hard to say how we know what a “thing” is and what is an attribute of a thing. The Greek for “one” is ἓν (*hen*). Somehow, combining colour, movement and size, we come to see what is one thing, what is an entity, a *hentity* to reverse the etymology, a thing with thingness.

I do not want to suggest that Aristotle says we create the world by naming it. In *Categories*, Aristotle says quite strongly that what is known comes before our knowing it; what is perceived comes before our perceiving it.¹⁴⁰ It is knowledge and the error that is implicit in knowledge that comes with *logos*. Our perceptions of colour are *proprie* and almost free from error. Aristotle says, “if you see white, there is white.” Our perception of

¹³⁸ Aristotle notices this in *Metaphysics*, VII. x, 1034b 30.

¹³⁹ Parts that can be cut off are especially problematic. Is your hair part of you? On the one hand yes, on the other hand no. Is your spleen part of you? What if it is diseased and the doctors who remove it don’t throw it away, but without asking or telling you (indeed, trying to conceal the fact from you) use it to create a medical product worth millions of dollars? Is that part of your body or a separate thing? Is it part of you? Is it yours? Is it *proprie* to you? Is it your property? Do you own it? *Moore v. Regents of California*, 793 P. 2d 479 (Cal. S.C., 1990) said no.

¹⁴⁰ Vii. 7b 25-28.

“thingness,” *hentity*, is not *propre*.¹⁴¹ To see things we have to combine perceptions that are *propre* with perceptions that are not and we do this with *logos*, language. That a thing is a *hentity* means it has a name. A hand is a “hand.” It is part of our “body.” This “page” is part of this “book.” If something does not have a name, it is not a *hentity*; it is not one thing; it is not *a* thing.¹⁴²

It is when we come to *logos* that error enters the picture.¹⁴³ Parmenides, a philosopher Aristotle disagreed with but from whom he learned a great deal, said anything we say to distinguish one thing from another is an error. Parmenides said the whole world is one thing, one *hentity*. The world does not come separated into things. We decide what is a thing when we give it a name and we are always mistaken in doing so. All we can say without error is *on* (another Greek word that is pronounced just as if it were an English word). *On* means “existence” and has two forms in Greek, τὸ ὄν (*taw on*), “being” and ὄν τός (*on toss*) “that which is.” The sound *on*, in both *to on* and *on tos*, is quite close to the sound *om*, which Hindus chant to express precisely what Parmenides meant. The whole world is one thing; all talk about it, all language, any attempt to divide the world up into things, is necessarily misguided and misleading.¹⁴⁴

Aristotle rejects Parmenides as a theorist because the idea that everything is one makes it impossible to explain either changes in things or differences between things.¹⁴⁵ Aristotle wants to explain reality not just

¹⁴¹ *About Living*(*De. An.*), III.vi., 430b 6.

¹⁴² In *Categories*, Aristotle insists that what we know is there before we know it, that we perceive is there before we see it. 7b 25-28. Aristotle contradicts himself a great deal, but I do not want to suggest that he thinks talking makes the world. Talking makes for knowledge of the world and it is only with knowledge that there is error.

¹⁴³ In *About Living*(*De. An.*), III.iii., 427b 14, Aristotle says “thinking makes possible falsehood.”

¹⁴⁴ The way Parmenides puts it is that you cannot say “is not.” You can only say “is.”

¹⁴⁵ In *Physics* I. iii, 186a 8, 23, 33, Aristotle attacks Parmenides savagely, saying he does not understand the use of the words *on* and *hen*. Aristotle thinks we must abandon Parmenides as soon as we speak about the world or try to understand it, but my view is that he accepts Parmenides at a speechless level. He does this, albeit without mentioning Parmenides, at *Physics*, I. ix, 192a 32, where he talks about “the underlying matter ... that is nature,” and at *Metaphysics*, IX. x, 1051b 7, where he says:

It is not because we see truly you are white that you are white, but through your being white it is to us appears (*phantas* from *phainomena*) this our truth-seeing.

Tredennick: It is not because we are right in thinking that you are white that you are white; it is because you are white that we are right in saying so.

In Chapter IV, I point out that the word “true” is inserted into translations of Aristotle’s *Ethics* to make that work seem bigger than it is. Here, *alethês*, the Greek word that is usually translated “true” (though literally

embrace it, but he accepts Parmenides' insight that the world is one thing. Thus, he regularly points out that seemingly different things work the same way. For instance, he notes that a *polis*, a family, a living being and the universe all have a part that rules and a part that is ruled.¹⁴⁶ Aristotle is not surprised by this. After all, if everything is one thing, why wouldn't it all work the same way?

For Aristotle, on the one hand the world is Parmenidean – it is all one thing.¹⁴⁷ On the other hand, our *logos* – what we say about the world and how we understand it – is Heraclitean.¹⁴⁸ Heraclitus says the world is opposites of infinite varieties. He is most famous for having said you cannot step in the same stream twice. He says everything is in flux. Everything is changing. The first time you step in the stream, it has never been stepped in by you; the second time it has. The second time you step in the stream, the water is different. The stream is not the same and neither are you. Look at the bow, Heraclitus said, look at the lyre. Each is a harmonious backbending tension of contraries, *παλίντονος ἀρμονίη* (*pa lean' tow noss har moan knee' A*).¹⁴⁹ According to Heraclitus the whole world quivers with *palintonos harmoniê*. The way down is the way up.

Parmenides said the world was one; Heraclitus said it was two. Aristotle said on the one hand the world is one, on the other hand it is two.¹⁵⁰ In *Metaphysics*, Aristotle goes off on several long tangents about oneness and twoness. He does not say so explicitly but he thinks that on the one hand the world is Parmenidean – one; on the other hand the way we talk about the world, *logos*, is Heraclitean – two.¹⁵¹ The world is one thing;

it is *a-lethês*, not-hidden) is used twice, but Tredennick does not use it even once in his translation. His “right” could just as easily be *orthos*, which is very different from *alethês*.

¹⁴⁶ *Politics*, I. v, 1254a 30

¹⁴⁷ *Metaphysics*, XII. i., 1069a 19, XII. iv., 1070a 32.

¹⁴⁸ Aristotle discusses oneness and twoness in *Metaphysics* I. Nowhere does he say exactly what I am saying he says. What I am presenting is what I read him to say. In *Metaphysics* IV, Aristotle talks about Heraclitus. I think he says what I report him here as saying.

¹⁴⁹ Some say Heraclitus used *palintropos*, “back-turning” rather than *palintonos*. See, G.S. Kirk, *Heraclitus, The Cosmic Fragments* (Cambridge, 1954) p. 203 and T.M. Robinson, *Heraclitus* (U, Toronto, 1987) p. 116.

¹⁵⁰ He also says it is three, *Metaphysics* XII.x, 1075a 32.

¹⁵¹ The closest Aristotle comes to “resolving” this is in *Physics* I. vi, 189b 17 where he says things are three – two opposites and a third thing on which the opposites act. (See also *Physics* I. vii, 190b 24.) Aristotle also says things are 3 in *Metaphysics*. He severely criticizes both “those who make everything contraries” (XII. x, 1075a 27-33) and “those who make many things one” (XII. x, 1075a 33-b 20), this is Parmenides and Heraclitus, though not by name. I still take him to be putting the two together because in the course of discussing 1 and 2, he says explicitly “we can loosen things up by well-saying of 3 something it is.” XII. x, 1075a 32.

humans use *logos* to talk about the world and understand it; *logos* is integrated contrarity. Words say yes and no, on and off. Combining *on* with *logos* gives us the English word “ontology,” talk about existence. Parmenides said we can only say *on*, “it is.” Aristotle’s logic is an analysis of the ways in which we say “it is not.” Like Derrida, the French *philosophe*, I believe puns contain as much meaning as etymology, so I point out that Aristotle’s logic could be thought of as “offtological.”

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Logos is the Greek word for “a word.” In the New Testament it becomes “the Word.” “In the beginning was the Word.” (John 1:1) In Aristotle’s Greek, even though *logos* is a singular word, it is always used as if it were plural. “In the beginning were words.”

Logos is not a real plural. The real plural of *logos* is *logoi*, which means “words.”¹⁵² *Logos* is a grace plural that means words, language, discourse, terminology, jargon, argument, account, story, etc. (Notice that “etc.” is on the one hand a string of further terms and on the other hand a member of some of them.)

Plumbers have a *logos*. Bricklayers have a *logos*. Doctors have one. So do lawyers. Everyone who speaks the same language shares a *logos* and this sharing goes beyond particular language communities, first because all humans use words to speak and think about things, and second because *logos* includes not just words, but word substitutes, like signs and symbols. *Logos* is all the thinking that goes on behind the creation and use of words and word substitutes. It is reasoning and reason, explanation, understanding, theory, formula, rule, and ratio.

From “ratio,” translators get the Latin-English word “rationality” which is often used to translate *logos*. On the one hand, *logos* does mean “rationality,” on the other hand it does not. I do not use “rationality” to translate *logos* because rationality is too much about the mind and too little about the mouth. It conceives of speech as externalized *logos*. To me, thinking seems like internalized *logos*. We use *logos* to communicate with others and ourselves. *Logos* is the voice in our heads. It is the words we say

¹⁵² The word *logoi* recurs in this chapter.

silently as much as the words we say out loud. *Logos* is the understanding we express in words. *Logos* is what the French call “*langue*” and “*parole*,” language and the use of it. *Logos* does not mean thinking and using words: it means using words to speak and think with. The difference is significant because our idea of thinking is that we must do it by ourselves and we know that we cannot speak except with, to and for others.

Logos is legendarily untranslatable and one scholar says: “*λόγος* is an impossible word to translate in Aristotle.”¹⁵³ The trouble with *logos* is not that it is impossible to translate. As we saw in Chapter I, *polis* is impossible to translate. There is no modern word for *polis*. The problem with *logos* is not that there is no word for it; the problem is that there are too many words for it. *Logos* is too big a part of human life, indeed, Aristotle says *logos* is what makes humans different from animals. The difficulty we have translating the word *logos* is the same as the difficulty we would have if we tried to say what made humans different from animals. Is it that we speak? Is it that we are rational? Is it that we think? Is it that we make *polisses*, laws, poems, games? It is all of these things, but it is also that we have second thoughts about things. A rat caught in a trap does not think, “I wish I hadn’t put my foot in here.” Rats cannot think in opposites or negatives.¹⁵⁴ Humans cannot help but think in contraries. “Everything is opposites or comes from opposites,” Aristotle says. “The quantity of words is limited. The number of things is not limited. Words must mean more than one thing.”

*

Aristotle combines Parmenides and Heraclitus. He also adds a dash of Pythagoras. Pythagoras said numbers were the basic thing of which the world was made.

[T]he peculiarity of the Pythagoreans is that they crudely identified things with numbers; i.e. they maintained not merely that things are knowable *qua* measurable or numerable, or merely that things conform to mathematical laws, etc., but that things *are* numbers (in whatever sense we are able to interpret the theory).¹⁵⁵

¹⁵³ H.H. Joachim, *Aristotle, The Nicomachean Ethics, A Commentary* (Oxford, 1951) p. 51.

¹⁵⁴ A native friend says, how simple white people are.

¹⁵⁵ H.H. Joachim, *Aristotle, The Nicomachean Ethics, A Commentary* (Oxford, 1951) p. 147.

Pythagoras is usually associated more with Plato than with Aristotle; indeed, Aristotle himself said Plato “followed them [the Pythagoreans] in most things.”¹⁵⁶ Plato used numbers as the next best thing to Ideas or Forms. Aristotle may not have been quite as thrilled with numbers as Plato was, but he was very excited about Pythagoras’ discovery of the mathematics behind music.¹⁵⁷ If you pluck a taut string you get a tone; a string half the length produces the same tone one octave higher. This has nothing to do with culture or learning. It is a fact of nature.

For Pythagoras and Aristotle, the octave showed that the relationship between 1 and 2 was built into the world. $\frac{1}{2}$ was not just a number. $\frac{1}{2}$ was an aspect of reality. This is Parmenides and Heraclitus all over again, one and two. The relationship between them is very important to Aristotle. The integrated contrariness of *logos* is balanced. Aristotle says the virtues are middles between contraries. Courage is a middle between rashness and timidity. One is tempted to say courage is the $\frac{1}{2}$ way point between these contraries, but balance does not necessarily come at the mid-point or the middle or the mean or at any other single point. (See Chapter IV)

Aristotle knows that $\frac{1}{2}$ is not the only middle. He knows this in part because Pythagoras went beyond $\frac{1}{2}$ in his discoveries about numbers. Pythagoras discovered that $\frac{1}{2}$ was not the only numerical relationship built into the world, nor even the most important one. A string and a string $\frac{2}{3}$ of its length produce tones that sound harmonious. A string and a string $\frac{3}{4}$ of its length also sound harmonious. For Aristotle, the virtues are not the middles between contraries; they are somewhere in the middles between contraries. The virtues are harmonious balances between contraries.

Aristotle and Socrates

Aristotle borrows from Parmenides, Heraclitus and Pythagoras. He also takes something from Socrates – not from Plato, from Socrates. This is very hard for us to understand. We know Socrates and Plato were not the same person but we treat them as if they were. We do this especially when it comes to their “philosophies.” Thus, we speak of the “socratic” dialogues and the “platonic” dialogues, meaning the same thing by both.

¹⁵⁶ *Metaphysics*, I. vi, 987a 30.

¹⁵⁷ “All the ancient writers on Pythagoras and music are unanimous that he was the first to discover the mathematical basis of music” P. Gorman, *Pythagoras, A Life* (Routledge and Kegan Paul, 1979) p. 161.

Our knowledge of Socrates does not come exclusively through Plato. Aristophanes, a friend of Socrates, wrote a comedy about him, *The Clouds*. It made fun of Socrates and was performed during Socrates' lifetime. He almost certainly saw it. S. Kierkegaard thinks it the most faithful representation of Socrates.¹⁵⁸ Socrates never saw Plato's dialogues. They were all written after his death and they were not the only posthumous portraits painted of Socrates. Many people wrote about Socrates after he died. Some knew him, some knew of him. There was a *genre* known as *sôcratikoi logoi*, which is either "words about Socrates" or perhaps even, "Socrates' words."

Besides Plato's dialogues, the only work of this sort to have survived is Xenophon's *Memorabilia*. In this work, Xenophon relates stories about things he and Socrates did together and things Socrates said to him. *Memorabilia* is different from the dialogues in that Xenophon purports to be telling what Socrates actually said and Plato does not. Plato's dialogues are clearly constructed. Not only is the form of *Memorabilia* different from the form of the dialogues, the Socrates in *Memorabilia* is a little different from the Socrates in the dialogues. For instance, Xenophon remembers Socrates as wanting to die. Plato portrays him as grudgingly willing to die.

Most important, the Socrates in the *Memorabilia* is dull, while the Socrates in the dialogues is anything but dull. Xenophon's portrait of Socrates is so pale by comparison with Plato's that we ignore it almost entirely. Our understanding of Socrates is dominated by the portrait of him in Plato's dialogues, but as G. Vlastos has made clear, Plato's dialogues contain two contrary portraits of Socrates.¹⁵⁹ In the later dialogues, Plato

¹⁵⁸ Kierkegaard thought Aristophanes' portrait of Socrates in *The Clouds* was the most accurate portrayal of him. "... it is the actual Socrates which Aristophanes has brought onto the stage" S. Kierkegaard, *The Concept of Irony with Constant Reference to Socrates*, (trans. L.M. Capel, London, Collins, 1966) p. 161. Kierkegaard thinks Aristophanes has to be comically accurate. He sees the real Socrates as having "a purely negative standpoint yielding nothing at all." (p. 174) He says "Socrates entire activity consisted in ironizing" (p. 174) and sees Plato as having "attempted to fill in the mysterious nothingness which constituted the essential point in Socrates' life by giving him the Idea ..." (p. 181). As will appear, I agree with Kierkegaard about Socrates, but I do not base my view on the *The Clouds*. Unlike Kierkegaard, I see it as a burlesque. My views about Socrates come from Aristotle, whom Kierkegaard does not mention.

¹⁵⁹ *Socrates: ironist and moral philosopher* (Cambridge, 1991) *passim*. Kierkegaard says "it became increasingly difficult for [Plato] to reproduce irony in its totality and to refrain from any admixture of positive content ..." S. Kierkegaard, *The Concept of Irony with Constant Reference to Socrates*, (trans. L.M. Capel, London, Collins, 1966) p. 129.

gives us his philosophy “through Socrates’ mouth.”¹⁶⁰ In the early ones, Plato sticks closer to the historical Socrates. What Aristotle takes from Socrates, he takes either from the early dialogues or more likely from the other *Sokratikoi logoi* that he heard before he ever met Plato.

Several of the early Arab biographies say Aristotle studied with Socrates for three years before he went to Plato’s Academy. This is plainly impossible since Socrates died 16 years before Aristotle was even born. Chroust wonders if “Socrates” might mean “Isocrates” and suggests that

There might be another possible explanation of the account that Aristotle stayed three years with Socrates; at the time Aristotle arrived in Athens in 367 B.C., Plato was in Syracuse (or on his way to Syracuse), not to return until 365-4 B.C. Perhaps some confused biographer or epitomizer, being familiar with these facts, wished to account for the intervening three years, and hence, simply invented the story that Aristotle stayed three years with Socrates.¹⁶¹

We can take what the Arab biographers say as metaphor rather than confusion. When Aristotle came to Athens, Plato was away in Syracuse. (We will come back to what Plato was doing in Syracuse.) With Plato away, one of the primary things Aristotle would have done was hear and read stories about Socrates. Like us, he would have read the early and some of the middle dialogues by Plato but, unlike us, he could not have read the later dialogues. Aristotle would first have encountered Socrates differently from us. We treat Socrates and Plato as one and the same, Aristotle did not do this. Aristotle treated them quite differently.¹⁶²

When Plato returned, Aristotle became a follower of Plato’s philosophy and no doubt, he swallowed Plato’s version of Socrates. Later in his life, when he rejected Plato, Aristotle went back to the pre-platonic Socrates, the Socrates he had first encountered in Athens. The Socrates in the later dialogues mouths the philosophy of Plato. Aristotle rejected him

¹⁶⁰ D.M. MacDowell, *Aristophanes and Athens* (Oxford, 1995) p. 130. In *Socratic Studies* (Cambridge, 1994) p. 37, Vlastos, speaks of “the metamorphosis of Plato’s teacher into Plato’s mouthpiece” and at p. 29 he speaks of the “flock of *obiter dicta*” Plato “puts into Socrates’ mouth.”

¹⁶¹ A-H Chroust, *Aristotle* (London, 1973) Vol. I, p. 97.

¹⁶² A denial of this in the strongest terms can be found in A.E. Taylor, *Socratica Varia, First Series* (Oxford, 1911).

along with that philosophy, but the historical Socrates, the Socrates of the earliest dialogues, did not have a “philosophy.” This Socrates did not try to teach people things. He did not have answers; all he had was questions. He used these questions to unravel the knowledge people thought they had.

It is possible that Socrates thought unraveling people was a way to get at the truth. Some scholars have this view.¹⁶³ But the effect of Socrates’ questions – what they actually accomplished – was to disprove any and all claims people made to knowledge.¹⁶⁴ Aristotle thought this was the wrong direction to take questions. Aristotle was a philosopher, a lover of wisdom. Socrates was an anti-philosopher. He thought there was no wisdom, at least for humans. Aristotle thought Socrates was right to ask questions: questions were the way to do philosophy. But Aristotle thought Socrates made the wrong use of his questions. He thought Socrates took his questioning in the wrong direction.

Socrates method was simple. He asked people what they knew and he always insisted that they tell him what they knew in the form of a general statement that covered every case. If it didn’t cover every case, Socrates said, it did not count as knowledge. In Greek, a statement that covers all the cases is *ὀρίζεσθαι καθόλου* (*whore E’ zest thigh cath whole’ loo*). *Horizesthai* comes from *horos*, which means a boundary and becomes our word “horizon.” *Katholou* is our word “catholic” or “Catholic,” both of which mean “all embracing.” *Katholou* comes from *kata* (*k’ta*) “under” and *holou* (*whole’ oo*) “whole.” The lexicon says *katholou* means “on the whole” “in general,” but that is a mistake about English. “On the whole” and “in general” mean *mostly* and that is precisely not what Socrates is about. If you know something, Socrates said, you can draw a line; you can make a horizon, which *everything* will either be over or under. This is not in general, this is everything. We will see this come up again. My retranslation, “by-whole,” is meant to draw attention to this.

When someone told Socrates what they knew, when someone drew a line that divided everything, Socrates applied the second step in his method. He brought up a weird case they hadn’t considered. In law school, asking a question about a case that’s brought in from left field is called “the Socratic

¹⁶³ In *Socratic Studies*, G. Vlastos discusses this view and it’s opposite.

¹⁶⁴ S. Kierkegaard, *The Concept of Irony with Constant Reference to Socrates*, (trans. L.M. Capel, London, Collins, 1966) *passim*.

method.” In Greek, it is called ἐπακτικοὶ λόγοι (*eh pack tea' coy law' goy*). *Epaktikoi* is a verbal form that comes from the verb *epagô*, meaning, to bring in in-bring. *Logoi* means words. It is the plural of *logos*. Socrates used *epaktikoi logoi* to undermine *horizesthai katholou*.¹⁶⁵

In *Metaphysics* Aristotle says, “there are two things that Socrates might rightly be said to have contributed, *epaktikous logous* and *to horizesthai katholou*.”¹⁶⁶ I have explained how I think this passage should be translated; other translators disagree. The Oxford translation says the two things Aristotle says Socrates contributed to philosophy are “inductive arguments and general definition.”¹⁶⁷ The Loeb translation has “inductive reasoning and general definition.”¹⁶⁸

“General definition” is accurate (especially if one remembers that it covers everything) but it seems flat when the Greek fairly begs for us to talk in terms of drawing a line that decides all the cases. “Inductive reasoning” is flat out wrong. It completely misses Aristotle’s point. Indeed, it reverses the meaning of what Aristotle says. As I pointed out in Chapter I, Aristotle did not know the word “inductive.” It comes from Latin. The Latin for “bring” is *duco* and it is from *in duco* that we get “inductive.”

If we use “inductive” when we translate the words *epaktikoi logoi* where Aristotle is talking about logic, we are being anachronistic, we are mixing times in an improper way, but at least we are getting Aristotle’s meaning correctly. If we use “inductive” to translate the words *epaktikoi logoi* where Aristotle is talking about Socrates, we are getting Aristotle’s meaning wrong. Aristotle does not say Socrates used inductive arguments or reasoning. Aristotle would not have said this because Socrates did not use inductive arguments; he used counter examples and they work deductively. Deciding whether something is or is not a counter example involves some inductive reasoning, but Socrates’ greatness was his ability to bypass this step and pose counter examples so obvious they could not be denied. (Great law professors are said to have this skill and, as we will see, Socrates was a kind of perverse legal genius.)

¹⁶⁵ Aristotle uses the accusative plural *epaktikous logous*. Because English generally uses the nominative case, it is common to change *epaktikous logous* to the nominative plural, *epaktikoi logoi*.

¹⁶⁶ XIII. iv, 1078b 27

¹⁶⁷ D. Ross, *Metaphysics* (Oxford, 1924)

¹⁶⁸ H. Tredennick, *Metaphysics* (Harvard, 1933)

Using counter examples is the contrary of using inductive arguments. Counter examples are a form of deduction, not induction. Counter examples are negative; they use one particular case to tear down fake knowledge. Inductive arguments are positive; they use particular cases to build up knowledge. Aristotle's analysis of the positive power of induction is a central feature of what he says about how we know things. Aristotle sees the doing of philosophy as a positive thing. This might be the most striking thing about his work. It stands out in every line: Aristotle does not share the melancholic outlook that he himself thought was characteristic of philosophers.¹⁶⁹ Aristotle does not think you have to be sad because you are smart. Indeed, he says, wisdom makes for happiness.¹⁷⁰ Aristotle thinks life is great and he thinks doing philosophy, which means thinking about things for the sake of thinking, is the next best thing to being a god.

If we translate *epaktikoi logoi* as “inductive arguments,” we miss precisely the difference between Aristotle and Socrates. Socrates was negative; Aristotle is positive. It is important to be clear about this. In saying Socrates was “negative,” I am not saying either that Socrates was not important or that Aristotle thought Socrates was not important. The first step to knowing anything may be realizing that you don't know. Aristotle thought Socrates was very important but he thought Socrates went in the wrong direction. Aristotle uses examples to build knowledge. He uses what we call “induction.” Socrates used counter examples to tear down fake knowledge, to show people they did not know what they thought they knew.

The translations – and all of them say exactly the same thing – suggest that Socrates was doing something positive rather than negative. The Loeb translation makes it clear that “induction” has a positive direction when it explains Aristotle's comment about Socrates this way in a footnote:

What Aristotle means is that Socrates was the first thinker who systematically attached importance to general definitions and systematically used arguments from analogy in order to arrive at them.

¹⁶⁹ *Problemata*, 953a 11

¹⁷⁰ *Ethics*, VI, xii, 1144a 5. Since he contradicts himself, Aristotle also says, sometimes philosophy can be bad for one's health. *Ethics*, VII, xii, 1153a 20.

The view that in this passage Aristotle is saying that Socrates used *epaktikoi logoi* to arrive at *horizesthai katholou* is widespread. Commenting on this passage a French scholar says:

En nommant ici les discours inductifs, Aristote ne fait que signaler la voie par où Socrate s'acheminait à ses définitions: "Les deux choses, dit Zeller [*Philosophie des Grecs* (1844-1852)], sont d'ailleurs identiques au fond, car les *λογοι επακτικοι* ne sont que les moyens de trouver les idées générales."¹⁷¹

The idea that Socrates used *epaktikoi logoi* to arrive at general definitions or as means to find them is seconded by another scholar who speaks of "Socrates in his search for ethical definitions or universals."¹⁷²

One might perhaps speak of the Socrates who mouths Plato's philosophy in the later dialogues as "searching for ethical definitions," but one cannot speak this way of either the real Socrates or the Socrates in the *Apology*. Most consider the *Apology* the earliest dialogue, the one in which Plato's portrait of Socrates is least inaccurate. In the *Apology*, Socrates suddenly brings up horses in his discussions with Meletus, first about making young people the best they can be and then about the gods and believing in them. Socrates is not creating a general definition. He doesn't think believing in gods is like believing in horses, nor does he think teaching young people how to be the best people they can be is the same as training a horse to be the best horse it can be. Socrates is trying to make Meletus look like a fool in front of the jury. If there is any general definition to be induced from the examples Socrates brings up in the *Apology*, it is that all people are fools. They think they know what they don't know. "Look," Socrates says to the jury, "Meletus doesn't know what he's talking about."

Nor is it just the *Apology*. Here is a description of Socrates' methods from Robinson's *Plato's Earlier Dialectic* (Oxford, 1953).

The outstanding method in Plato's earlier dialogues is the Socratic elenchus. ... It is the most striking aspect of the

¹⁷¹ Th. Deman, *Le Témoignage d'Aristote sur Socrate* (Paris, 1942), p. 78.

¹⁷² W.D. Ross, *Aristotle, Metaphysics*, (Oxford, 1924) Vol. II, p. 421.

behaviour of Socrates in Plato's early dialogues. ... (p. 7) [It is] negative and destructive in essence ... (p. 19)

Robinson points out that Socrates denies that he is bent on refuting definitions but says, "[t]his denial ... is insincere, and constitutes what is known as Socratic slyness or irony." (p. 8)

When we examine one of the arguments in detail... we become convinced that from the very first ... Socrates saw and intended the refutation.... (p. 9)

Robinson comments directly on *Metaphysics* 1078b 27, the passage in which Aristotle says: "There are two things that Socrates might rightly be said to have given: *epaktikous logous* and *to horizesthai katholou*." Robinson refers to *epaktikoi logoi* as *epagoge* (ep ah go' gay) and says

Many readers, including Stewart and Ross, take Aristotle to be implying that the purpose of Socrates' *epagoge* was to obtain definitions. Aristotle does not here explicitly mention any connection between the two things except that they might both be attributed to Socrates. ... The fact that the present passage explains why Socrates wanted definitions, and does not explain why he practiced *epagoge*, has perhaps suggested the view that he regarded *epagoge* as a means to definition. ... [I]t is improbable that Aristotle is here suggesting that *epagoge* was essentially a means to definition. ... [E]pagoge is a means to the destruction rather than the establishment of definitions ... (p. 47-8)

The real Socrates tore down fake knowledge. He used examples to show that people did not know things. He was an anti-philosopher, who unraveled people who thought they had knowledge or were thought to have knowledge. The Greek for this is *exetasis*, often translated as "close examination," but literally meaning "out-arrangement" or "unraveling." (I mention that here because in *Politics*, which we will look at in Chapter V, Aristotle speaks of law as *taxis*, "arrangement.") The only conclusion Socrates drew from his unraveling of others was that people do not know what they think they know or what they are thought to know. "I have a reputation for being a wise man," he said, "but I'm not wise. If there is any

way in which I am wiser than others, it is that I do not think I know what I do not know.”

In the late 5th century BC, from roughly 425 to 399, Plato, and other rich, young Athenians, hung around and listened while Socrates unraveled the Athenians who were supposed to know things, the leaders of the *polis*. For much of this time Athens was at war with Sparta. Later, Alcibiades (Al sub eye´ a dees), one of the young men who hung around while Socrates unraveled the leaders of Athens, turned traitor and Athens lost the war. When the victorious Spartans named 30 men to run formerly democratic Athens, the leader and most ferocious of the Thirty Tyrants, was Critias (Cri[’]tic tea ass), another of the young men who had hung around with Socrates.

It took the Athenian people about a year to overthrow the Thirty Tyrants and restore their ancient democratic institutions. (Sparta, which had problems of its own, did not stop them.) Though there was an amnesty for everything done during and after the war, the Athenians tried Socrates for “ruining the youth of Athens.” Socrates was convicted and rather than leave Athens or pay a fine, he used Athenian law to force the Athenians to sentence him to death.¹⁷³

Socrates said he knew nothing, but his expert use of Athenian law can be seen both in the famous trial in which he was condemned – we will come back to that trial – and in another trial in which he was involved. That other trial is almost completely unknown today, but it was famous in the ancient world. It was called the Trial of the Six Generals.¹⁷⁴

The Trial of the Six Generals happened during the war with Sparta. It happened about eight years before Socrates’ final, fatal trial. The two trials are an integrated contrariness. Socrates’ famous trial was in a court before a jury of 500 or 501; the Trial of the Six Generals was in the assembly before at least 6000 citizens. In his famous trial, Socrates was the defendant; in the earlier one, he was the chairman of the assembly. Most important of all, Socrates’ role as defendant in the later trial was an expression of his particular personality; no one but Socrates could have been the defendant in

¹⁷³ Both Aeschines (*Against Timarchus* 173) and Xenophon (*Memorabilia* 1.2.12) attribute the conviction of Socrates to anger at Critias.

¹⁷⁴ It would be actually better to call the generals “admirals,” but there is another word in Greek for “admiral” so we have to call them “generals.”

that trial. Socrates' role in the Trial of the Six Generals was determined by the carefully orchestrated randomness that marked Athenian democracy. It was deliberate *συμβεβηκός*. Socrates had been randomly picked to be the chairman of the assembly for that one day from a group of 500 that had been randomly picked for that year.

The two trials in which Socrates took part could not have been more different, but he did the same thing in both of them. On both occasions, he was anti-philosophical. He used the procedures of the law to stand the law on its head. He made an example of himself. Like a good law professor, he made himself an example everyone could see. The six Athenian generals were accused of having left the scene of a big naval victory in the war with Sparta without picking up the surviving Athenian sailors in the water. The facts underlying the leaving of the men to drown are complicated and the state of the records makes it impossible to say exactly what happened. (Notice how much this is like a modern legal action.) Another battle, the chain of command, and perhaps a change in the weather were all involved. Whatever the precise facts, when the six generals were tried, the 6,000 Athenians in the assembly were howling for their blood. Someone made a motion that all the generals be killed. Socrates, as chairman of the assembly, said, "I cannot take that motion. The law says there has to be a separate motion for each one."

The mob threatened to kill Socrates along with the generals. He said, "Go ahead. Kill me if you want to, but I cannot take that motion. It is not according to law," *kata nomon* (*k'ta gnaw' mon*). Socrates screwed legal procedure to its tightest pitch and thereby brought the law to a standstill. The generals were not condemned till the next day, when Socrates was no longer in charge. Then, it seems, they were condemned on a single vote.

To unravel law by insisting on it was prototypically Socratic and Socrates did exactly the same thing in his later trial. He had an uncanny appreciation of Athenian law and played on the contrariness in it. Athenian law was on the one hand stable and on the other hand unstable. During the war with Sparta, Mytilene, (Mitt a lea' knee) an Athenian ally, went over to the Spartan side. The Athenians sent out an expedition and retook the city. The general in charge sent home, asking for orders about what to do with the citizens of Mytilene. The Athenian assembly met. A mob of over 6,000 voted to kill all the men of Mytilene and sell all the women and children into slavery. That would teach the rest of the allies not to rebel.

A ship was dispatched bearing this order but the next morning, the Athenians woke up and said, “What have we done? They were our friends and allies. We can’t kill them and sell them into slavery.” Another assembly was held at which at least 6,000 citizens voted to countermand the first order. A second ship was dispatched. Luckily, it caught the first one and the Athenians were saved from having to live with what they themselves saw as a terrible excess of their democracy.

When, eight years later, he was charged before an Athenian court with not believing in the city’s gods and ruining the young men of Athens, Socrates delivered a speech that very nearly divided the jury of 500 or 501 Athenians jurors equally. When, in an excess of democracy, they convicted him, Socrates would not let the Athenians off the legal hook. According to Athenian law, once Socrates was convicted, his accusers suggested a punishment for him. Socrates’ accusers suggested death. It was then up to Socrates to make a counter suggestion. Any other person would have made a reasonable offer and the jury would have accepted it. Socrates’ counter suggestion, his proposal for his punishment, was that he should be fed for the rest of his life at the public expense like an Olympic hero.¹⁷⁵ He said that’s what he deserved for what he had been doing, asking questions, unraveling people and showing them and everyone else that they did not know what they thought they knew.

Socrates’ counter proposal forced Athenian law to the breaking point. He made the jury select the death penalty and then, when the Athenians made it easy for him to escape from prison and go into exile, he refused to

¹⁷⁵ In the *Apology*, Plato has Socrates suggest that he pay a small fine, “one piece of silver,” and then, in a remarkable literary *tour de force*, Plato puts a phrase in Socrates’ mouth via his own mouth. He has Socrates say: “Plato, who’s sitting over there, suggests that I make it 30 pieces of silver.” It strikes me that this is the same price Judas gets for betraying Jesus and it seems to me that Plato might have created a symbol in the old world for betrayal. He compounds the effect of the phrase, which comes at the very end of the sentencing speech, by providing a resonance for it at the very beginning. Learning that he has been convicted, Socrates says, “Alright, you voted against me. A lot of things contributed to that result. You could almost say I sort of anticipated it. The amazing thing is how close the vote was. If 30 of you had voted the other way, I’d have been acquitted.”

The use of the number 30 at both the very beginning and the very end of Socrates’ sentencing speech is no accident. Plato makes Socrates say that if he had bribed thirty jurors to betray their oaths, he would have gotten off, and the number 30 was not picked at random. Plato created a metaphor for betrayal out of 30 pieces of silver because that is the number of Athenian citizens who betrayed the democracy as tyrants.

All of this, of course, is purely speculative.

do so. As an anti-philosopher, Socrates would not let himself or anyone else off the legal hook. Socrates drank the hemlock to shame the Athenians and show them they knew nothing. As he predicted, the Athenians came to regret what they had done. They came to see Socrates' trial as an excess of their democracy.

Fifteen or twenty years after Socrates was sentenced to death by a jury of his fellow Athenians, Plato wrote a fictional version of Socrates' speech to the jury. Other versions of this speech were circulating at the same time. They were an aspect of the *sôcratikoî logoi*. This *genre* was popular because in their mood of self-flagellation, as a way of tasting their shame, the Athenians grabbed up portraits of Socrates, portraits maligning themselves.

Plato's socratic dialogues are great art and they have remained successful for over 2000 years. No one thinks they fully understand them, but everyone finds them fascinating. The Athenians, for whom they were written, read them avidly and Plato acquired the reputation that Socrates had refused to accept for himself. Plato was considered a wise man. He was regarded as a person who could do what Socrates insisted he could not do, teach other people to be good.

Plato accepted this reputation. He did what Socrates had never done. He established a school, the Academy, and accepted money for teaching people.¹⁷⁶ He also wrote books and sold them. Socrates had refused to ever write anything down, let alone sell his "work."

Though scholars still disagree about exactly when the different dialogues were written, it is generally accepted that at a certain point, the Socratic dialogues changed. The earliest dialogues, although fictional, stuck closely to the historical Socrates. The anti-philosopher was portrayed as unraveling other people's fake knowledge. As time went on, however, the Socrates in the dialogues ceased to be an anti-philosopher and became a philosopher. He started telling people what he did know. He started

¹⁷⁶ So far as I am aware, there is no evidence for or against either this claim or the one in the following sentence. Plato was a rich man and it is possible that he did not accept money either for teaching or for what he wrote. But in Athens at this time people did take money for teaching and people did sell written work accept. If Plato did not do this, one would expect something to be made of it.

mouthpiece of Plato's philosophy. As Vlastos says, there was a "metamorphosis of Plato's teacher into Plato's mouthpiece."¹⁷⁷

The dialogues changed for a number of reasons. Unlike Socrates, Plato could not say he knew nothing. That might suit an anti-philosopher and a poor man, but Plato was neither. He had founded a school and was writing for publication. He had practical reasons to think people could know things and was terrified to think they could not. As Vlastos puts it, the "wildest of Plato's metaphysical flights ... is understandable as, among other things, an answer to a problem in Socratic elenchus."

The question, "how could this be true?", which never disturbed Socrates, could hardly help disturbing Plato Then one day, Plato becomes convinced of something his teacher would have thought fantastic – that every person's soul had existed long before birth, had gone through many previous births into different incarnations and had acquired, in some mysterious way, prenatal knowledge *about everything*, and this knowledge was now in every soul and fragments of it were recoverable by "recollection."¹⁷⁸

In his later dialogues, Plato created the Philosophy of Ideas or Forms and put that "philosophy" into the mouth of his Socrates. Plato had his Socrates say that the so-called "knowledge" that comes from *phainomena* is not Real Knowledge. *Phainomena* mislead us. That is why counter examples work to unravel the knowledge that comes from *phainomena*. Real Knowledge does not come from the senses and hence cannot be unraveled by counter examples. Real Knowledge is Knowledge of Ideas or Forms. In the later dialogues, Plato has Socrates say Knowledge of the Forms exists in people before they are born, before they ever sense anything.

This is the heart of platonism. We all know what it means, but it is not easy to explain and I will not endeavour to do so. Plato developed platonism, the idea of Ideas, as a way to get past Socrates' insistence that people do not know anything. Plato said we can know the Forms and people can be taught about them. The dialogues began to express this philosophy. The real Socrates had said people were bad because they did not know what

¹⁷⁷ *Socratic Studies* (Cambridge, 1994), p. 37. Socrates would have vehemently denied that he was Plato's "teacher."

¹⁷⁸ *Socratic Studies* (Cambridge, 1994), p. 26

was good. Increasingly in the dialogues, Plato made the character “Socrates” say that people could be taught the Form of Goodness. This led to a crisis in Plato’s life.

When Dionysus I, the tyrant of Syracuse, died, his son, Dionysus II took over as tyrant. Dionysus II was a mean, greedy, lustful young lout. His uncle, Dion, who had been a student of Plato’s at the Academy, invited Plato to come and teach the young man how to be good. Plato took up this commission (eagerly one suspects) and spent three years in Syracuse trying to teach Dionysus II the Form of Goodness. He failed abysmally. Dionysus II was mean, greedy, and lustful when Plato arrived in Syracuse. He was still mean, greedy, and lustful when Plato left.

Plato was 60 years old when he went to Syracuse and his unsuccessful brush with trying to put his platonic version of Socrates’ anti-philosophy into practice may have made his dialogues even more platonic. We know that it was sometime after this that Plato wrote the *Laws*, the only dialogue in which Socrates does not even appear as a character. Add to this that when Plato returned from Syracuse, he found a new, very bright young student at the Academy. Aristotle had just enrolled and nothing pushes a teacher like a very bright student.

Aristotle fell under Plato’s sway. He swallowed the idea of Ideas hook line and sinker. Then later he changed his mind and gave up the idea of Ideas. He became the Aristotle we know. He agrees with Plato about one thing: that Socrates was wrong when he said no one knows anything. Like Plato, Aristotle thought people did know things. What Aristotle and Plato meant by “know” were contraries. Aristotle meant know; Plato meant Know. But at least Aristotle and Plato agreed that Socrates was wrong. Socrates thought people could not know anything. The difference between Aristotle and Plato is how they disagreed with Socrates.

Plato and Aristotle actually agreed about two things. One was that Socrates was wrong. The other was something that Aristotle, Plato, and Socrates all agreed about. All three of them say that people do not want to think of themselves as bad; people do not want to be ashamed of themselves. To be ashamed of yourself feels terrible and there is no escape from it. One could say not disrespecting yourself is the essence of ancient Greek philosophy and culture. It is the theme of the *Iliad*, the first book in classical Greek culture and it comes up again and again all through Greek poetry and

drama. It is what Orestes is about; it is what Oedipus is about: it is what Ajax is about. That it is critical not to disrespect yourself is a theme in Greek culture. The Golden Verses of the Pythagoreans say, “above all things, thine own self-respect,” and though they agree about very little else, the three culminating Greek philosophers, Socrates, Plato, and Aristotle all agree about that.¹⁷⁹ (We will come back to this in Chapter IV when we look at *Ethics*.)

¹⁷⁹ Perhaps it is impossible to disagree with them. That would be against the thesis of this book. There must be a contrariness, but I cannot see it.

Chapter III

Retranslating what Aristotle says about law in *Rhetoric*

The thirteenth section of the first book of *Rhetoric* is only four pages long. In it, Aristotle explains the process by which contraries are integrated and mentions many of the integrated contrarities that make up law. He speaks of natural law and conventional law, unwritten law and written law, law and equity. All of these contrary meanings of the word “law” are central to legal thought and Aristotle does not limit himself to these three. He goes on to notice several more. He says there are laws about general things and laws about particular things, vicious breaches of the law and accidental breaches, breaches that hurt one person and breaches that hurt everyone. He also points out that the law can be read in a literal way and in a purposive way.

One of the most interesting things in *Rhetoric* I xiii is the sentence in which Aristotle explains the process for integrating contrarities. It comes just after the beginning of I xiii. Since my major goal is to say some things about the way Aristotle has been translated, I will start by presenting four different translations, not of that sentence, but of the two sentences that precede it.¹⁸⁰

The Cambridge translation of I xiii begins this way:

13. These, then, may be said to be the moods in which men do wrong, – the nature of the wrongs and the wronged, – and the motives. Let us now discriminate the various kinds of wrong deeds and just deeds, starting from this point.¹⁸¹

The Loeb translation renders the same Greek language somewhat differently. It treats the first sentence not as the start of I xiii but as the end of I xii.

These are nearly all the dispositions which induce men to commit wrong, the nature and motives of the wrongs and the kind of persons who are victims of wrongs.

¹⁸⁰ 1373a 38.

¹⁸¹ R.C. Jebb, *Aristotle, Rhetoric* (Cambridge, 1909)

13. Let us now classify just and unjust actions generally, starting from what follows.¹⁸²

The Oxford translation also treats the two sentences as the end of I xii and the beginning of I xiii, but this translation is different yet again.

The characteristics of those whom people wrong and what sort of wrongs they do and against what sorts of people and for what reasons are more or less these.

13. Let us now classify all unjust and just actions, beginning first with the following points.¹⁸³

The Penguin translation is as follows:

The conditions, then, in which men do injustices, and what sort of crimes and against what sort of victims and why, are more or less the ones given.

13. Now let us distinguish all crimes and punishments, starting first from the following point.¹⁸⁴

What Aristotle says is not radically different in any of these four translations, but there are differences. There would have to be. No one would make a new translation if it were not at least a little different from others. Examining the differences in these four translations raises some questions about the nature of translation. Which differences make a difference? What difference do they make?

The first difference comes very quickly. The Cambridge translation has “the *moods* in which men do wrong.” The Loeb has “the *dispositions* which induce men to commit wrongs.” The Oxford has “the *characteristics* of those whom people wrong.” The Penguin has “the *conditions*, then, in which men do injustices.” These are not different translations of the same Greek word; they are translations of the same Greek non-word. Retranslated literally, the Greek says:

¹⁸² J.H. Freese, *Aristotle, Rhetoric* (Harvard, 1926).

¹⁸³ G.A. Kennedy, *Aristotle, Rhetoric* (Oxford, 1991).

¹⁸⁴ H. C. Lawson-Tancred, *Aristotle, Rhetoric* (Penguin, 1991).

as	having (or being)	they do injustice
<i>hôs men oun</i>	<i>echontes</i>	<i>adikousi</i>

Translating from Greek into English, particularly translating Aristotle's cryptic notes, requires translators to fill in what seem to be blank spaces. The way this is done has more to do with the different translators than with what Aristotle says. Are "moods," "dispositions," "characteristics," and "conditions" the same? Yes. Are they different? Again, yes, though it would be very hard to say exactly what the difference is.

I have already mentioned one even more striking difference. The Cambridge translation makes the two sentences the start of I xiii, while the other three translations make the first sentence the end of I xii and the second sentence the beginning of I xiii. The numbering, of course, is not Aristotle's. It was added later by unknown scholars. It makes Aristotle's works seem more organized and systematic than they are. But the Cambridge translation presents Aristotle's comments on the contrarities of law as starting *from* this point, while the other three translations present Aristotle's comments as starting *after* this point.¹⁸⁵ Again, it is hard to say whether there is any difference here, and if so, what the difference is.

On other points, the difference between the translations is quite marked. For instance, the Oxford translation renders *ἀδικούσι* (*ah dee coo' see*) as passive: "those whom people wrong." All the other translations have *adikousi* as active. The Cambridge has "men do wrong." The Loeb has "men to commit wrong." The Penguin has "men do injustices." The verb is in the active voice and I cannot understand why the Oxford translates *adikousi* as passive. Is this translation meant to tell us something and if so, what?

We will come back to the meaning of the Greek word *adikousi* in a moment, but first, it is worth observing that, whatever *adikousi* means, the word occurs only once in the Greek.

as having (or being) they do injustice,
<i>hôs men oun echontes adikousi</i>

¹⁸⁵ Bekker starts 13 at the second sentence.

and how and to whom and by what pretty much these it is
kai poia kai poiou kai dia ti schedon taut' estin

In their translations, each of the translators repeats the English for *adikousi* several times. The Cambridge translation has “wrong,” “wrongs” and “wronged.” The Loeb has “wrong,” “wrongs,” and “wrongs.” The Oxford has “wrong” and “wrongs.” The Penguin has “injustices,” “crimes” and “victims.” Why is Aristotle made to repeat himself? The phrase *kai poia (poi' ah) kai poiou (poi' l'oose) kai dia ti* is classically Aristotelian and while the *kai* is repeated again and again, *adikousi* is not. The repetition of *kai* makes *kai poia kai poiou kai dia ti* into almost a ritual incantation and the repetition of “wrong” in the translations does almost the same thing. But the rhythm of the translated incantation – wrong, wrong, wrong – is wrong, wrong, wrong. The rhythm of Aristotle’s Greek incantation is -/- -/- ----. Perhaps we should allow Aristotle to say what he does say, “So having (or being) people do injustice, and how, and to whom, and by what, pretty much this is how it is.”

A more general thing that is hard to understand about the translation of Aristotle is why sometimes the word order is reversed. This happens with the second piece in the passage. In Greek, this is

the injustices all and the justices
ta d' adikêmata panta kai ta dikaiômata

through-driving beginning first in this way
*dielômen arxamenoï prôton enteuthen*¹⁸⁶

Adikêmata (ah dee kay' mah tah) comes before *dikaiômata (dee s'ky oh' mah ta)*, but the Loeb translation reverses this order. It has “just and unjust actions” rather than “unjust and just actions.” Why? Is there a point to this reversal or is it “merely stylistic” (whatever that might mean)?

Reversals of this sort occur in many translations of Aristotle. In Chapter IV, we will look at a striking one in *Ethics*, but look, for instance, at the phrase *ê hen ê on (A hen A on)* in *Metaphysics*.¹⁸⁷ As I explained in Chapter II, *hen* means “one” and *on* means “being,” but the Loeb translation

¹⁸⁶ I. xiii. 1, 1373b 1-2.

¹⁸⁷ IV. ii, 1005a 13.

has “or Being or Unity.¹⁸⁸ Why? Another example is from *On Translating*. The Greek is *oute gar logos oute apophasis estin*.¹⁸⁹ As I explained in Chapter II, *logos* is a hard word to translate, but *apophasis* (*ah po’ phasis*¹⁹⁰) means “against-say.” Why does the Loeb translation render “neither *logos* nor *apophasis*” as “neither denials nor sentences”?¹⁹¹

These reversals do not occur all the time; they occur unpredictably, in translations of different works by different translators. I can see no pattern to them and they puzzle me. Sometimes many translators do the same reversal. Thus, for instance, in *Politics* IV, Aristotle says

but to be poor and to be rich the same impossible
*alla penesthai kai ploutein tous autous adynaton*¹⁹²

The Oxford translation has this as “the same people cannot be both rich and poor.”¹⁹³ The Princeton translation has it as “But the same persons cannot be rich and poor at the same time.”¹⁹⁴ The Penguin translation has it as “But the same people cannot be both rich and poor.”¹⁹⁵

This reversal is not required by Greek grammar or syntax. Thus, the Loeb translation has the passage without reversal: “but it is not possible for the same men to be poor and rich.”¹⁹⁶ Why do the other translations reverse the order of what Aristotle says? Why, especially, do they do this when Aristotle himself reverses the order in the very next line. There, he speaks of *hoi euporoi kai oi aporoi* (*hoe you’ pour^boy kay^{ak} hoy ah’ pour^boy*), those who are well-provided and those who are not provided.

¹⁸⁸ H. Tredennick, (Harvard, 1933) And why does he use capitals? Is it because he sees Aristotle as under the sway of Plato? See Chapter II and Chapter IV.

¹⁸⁹ (*Dei. Int.*)16a 31.

¹⁹⁰ In Chapter I, I said each Greek word has one accent. Here that rule is broken. *Apophasis* has two accents and *estin* has none. They are pronounced as one word.

¹⁹¹ H.P. Cooke, (Harvard, 1938). Another graphic example is *Categories* 1b 28-2a 4, where Aristotle gives two or three examples of each category. H.P. Cooke, (Harvard, 1938) does not reverse any of Aristotle’s other examples, but he does reverse Aristotle’s examples of place. Aristotle has *en Lykeiō, en agora*. Cooke translates this as “‘In the market place,’ ‘in the Lyceum’.” Why?

¹⁹² IV iv., 1291b 8.

¹⁹³ D. Barker and J. Stalley (Oxford, Barker, 1946, revised Stalley, 1995).

¹⁹⁴ B. Jowett, *The Complete Works of Aristotle: The Revised Oxford Translation*, J. Barnes ed. (Princeton Univ. Press, 1984) The date of the translation is not given.

¹⁹⁵ T.A. Sinclair, (Penguin, 1962).

¹⁹⁶ H. Rackham, (Harvard, Loeb, 1932). Rackham numbers the chapter differently in several books. He has this as IV iii.

The three translations that reversed the first phrase do not reverse this one. The Oxford and the Princeton translations give it as “the rich and the poor,” the Penguin as “the well-to-do and the property-less.” What is the purpose of reversing the first phrase? The “rich and the poor” is a common phrase in English. “The poor and the rich” is a striking one. Aristotle uses one, then the other. The translations do not. Why? I’m not sure whether the reversals change the meaning of what Aristotle says or not and I’m not sure whether they are meant to. They do make one thing very clear, however, and that is how freely the translations make small changes in what Aristotle says.

They do this not just by reversing his words but by using different English words when Aristotle uses the same or related Greek words. *Adikousi*, *adikêmata*, and *dikaiômata* are all forms of the same word, but the Cambridge translation uses “wrong,” “wrongs,” and “wronged” for *adikousi* and “wrong deeds and just deeds” for *adikêmata* and *dikaiômata*. The Loeb translation uses “wrong,” “wrongs,” and “wrongs” for *adikousi*, but “just and unjust actions” for *adikêmata* and *dikaiômata*. The Oxford translation uses “wrong” and “wrongs” for *adikousi*, but “unjust and just actions” for *adikêmata* and *dikaiômata*. The Penguin translation uses “injustices,” “crimes” and “victims” for *adikousi*, and “crimes and punishments” for *adikêmata* and *dikaiômata*.

As is obvious from the four translations, there is a wide variety of possible translations for *δίκαια* (*dee' kaya^k*) and *ἀδικία* (*ah' dee kah*), the two basic forms that come up in the next passage. They can be translated as “just and unjust,” as “right and wrong” or as “rightful and wrongful.” They could even be translated as “legal and illegal.” What is *dikaia* and what is *adikia* is what the Athenian *dikastai* (jurors) determined in *dikastêrion* jury trials). *Adikia* are criminal acts.

It is not clear exactly which translations one should use for *dikaia* and *adikia*, but shouldn't each translation make a choice and stick to it? Aristotle did not write for publication but he is translated as though he were trying to write gracefully. This passage retranslated simply is:

xiii. So, on the one hand, having (or being), people do injustice, and how, and to whom, and by what, are roughly these. On the other hand, all unjust acts and just acts may be sorted out beginning first with this.

Notice that in my retranslation, I have put these two sentences together as the beginning of I xiii. I do this because the first sentence begins *ὡς μὲν*, while the second begins *τὰ δέ*.¹⁹⁷ One of the strongest characteristics of Greek prose is the *men/de* structure. Two statements, phrases or words are counterposed; the first begins “something *μὲν* ...,” the second begins “something *δέ*” The second is in some sense a contrary of the first.

All Greek writers use the *men/de* form. It is not peculiar to Aristotle, but the whole point of the *men/de* form is contrariness and it might almost have been created for Aristotle. The pervasive use of *men/de* in Greek prose probably accounts, at least in part, for Aristotle’s sensitivity to contrariness.

I think the *men/de* in these two sentences suggests that they are meant to be linked.¹⁹⁸ I make this suggestion stronger by retranslating *men/de* as “on the one hand/on the other hand.” This retranslation goes against the advice that is normally given to beginners in Greek. Translating *men/de* as “on the one hand/on the other hand” is thought to make Greek prose coarse. In his textbook on Greek, D. J. Mastronardi refers to on the one hand ... on the other as “a common, but clumsy, translation”¹⁹⁹ of *men/de*.

Aristotle is not sophisticated. One can almost see him gesturing, as he says “on the one hand, on the other hand.” When I retranslate Aristotle, I let him use his hands.²⁰⁰ I almost try to coarsen what he says. Aristotle did not write for publication. He wrote notes for himself. As I pointed out in Chapter II, when he was a young man at Plato’s Academy, Aristotle published works that were said to be highly stylish.²⁰¹ The works we have from Aristotle, the unpublished notes he compiled in his 50s, are anything but stylish. They were meant to be coarse and clumsy.

¹⁹⁷ Actually the second sentence begins *τα δέ*. The *de* is shortened because the following word begins with a vowel.

¹⁹⁸ In Chapter IV, I express some second thoughts about how *men/de* should be presented.

¹⁹⁹ *Introduction to Attic Greek* (University of California, 1993) p. 86.

²⁰⁰ J. Derrida comments on speaking and thinking with the hand in *Geschlecht II: Heidegger’s Hand* published in *Deconstruction and Philosophy*, ed. J. Sallis (U. of Chicago, 1987).

²⁰¹ 300 years after Aristotle’s death, Cicero would say they had “suavitas.” *Top.* 1.3. Cited in W.K.C. Guthrie, *The History of Greek Philosophy*, vol. 6 (Cambridge: Cambridge University Press, 1969), p. 57.

Aristotle does not always use *men/de* to express contrariness; he expresses contrariness in many ways. But he uses *men/de* a great deal.²⁰² *Men/de* is a ready-made way to express contrariness in Greek, and on the one hand/on the other hand is a ready-made way to express it in English. In retranslating Aristotle, I look for *men/de* and make a point of translating it “on the one hand/on the other hand.”²⁰³ As you will see quite soon, on the one hand other translations do use “on the one hand/on the other hand,” on the other hand they do not.

*

The next remark in *Rhetoric* I xiii is central. In it, Aristotle explains the process for integrating contrarities.

horizon-draw the justices and the injustices
hōristai dê ta dikaia kai ta adika

toward law two
pros te nomous duo

and toward which it is double
*kai pros hous esti dichôs*²⁰⁴

The Oxford translation renders this as

Just and unjust actions have been defined in reference to two kinds of law and in reference to persons spoken of in two senses.

In other words, contraries are integrated by laying one over the other. First one contrary is marked out, then a second contrary is marked out across, on top of, or perhaps underneath the first one.²⁰⁵

²⁰² *Metaphysics*, VIII. ii contains a particularly rich vein of *men/de*. In 10 lines, from 1042b 16 to 1042b 25, Aristotle uses *men/de* 3 times, the first *men* being followed by 8 *des*.

²⁰³ Aristotle is famous for talking about what translators call “the unmoved mover,” but what Aristotle actually says is *to kinoun men akinêton de*, the mover on the one hand unmoved on the other hand. *Physics*, VIII. v, 258a 29. At 258a 10, he says the same thing with “*A*” between *to* and *kinoun*.

²⁰⁴ I. xiii. 1, 1373b 2-3

²⁰⁵ This is embodied most graphically in Aristotle’s logic, a central feature of which is to distinguish the overlapping contrarities: “some” – “all” and “some – “none.” This difference between “yes/no” and “all/at least one” is the difference between a contradiction and a contrary. Contrariness covers both. See W. Neale, K. Neale, *The Development of Logic*, (Oxford, 1962) p. 55.

In Chapter II, I pointed out that Aristotle was influenced by Pythagoras, who said everything in the world was a reflection or recreation of numbers. Pythagoras and his followers tried to identify what things were associated with what numbers. They said justice was 4. The idea that justice is 4 or any other number rings as foolishness on modern ears but in this passage Aristotle is harking back to Pythagoras. He is saying that when we analyze justice in terms of law, we get 2^2 . This same idea is suggested in *Ethics*, where Aristotle says,

necessary the justice in least to be four
anankê apa to dikaion en elachistois einai tettarsin

to which justice chances to be two it is and in which two
*hois te gar dikaion tynchanei on duo esti kai en hois duo*²⁰⁶

2^2 , two 2s, each the same and working on one another in the same way, is quite an apt metaphor for justice. 4 or 2^2 is the first square and we do call someone who is just “square.” When we speak of getting a “square” deal, we mean a fair one.

It is not necessary to accept the Pythagorean slant I have put on this passage. The important point to note is that Aristotle is describing the process of integrating contrarities and he immediately gives an example in which he employs the process he has just described. The example contains three uses of *men/de*. I have highlighted them. Notice their integrated form: *men/de, men(men/de)de*.

*Legô de nomon ton **men** idion ton **de** koinon, idion **men**
 ton hekastois hôrismenon pros autous, kai touton ton
men agraphon ton **de** gegrammenon, koinon **de** ton kata
 physin.*²⁰⁷

Legô, the first word in this passage, is related to *logos* and literally means “I say.” This is a regular, though not invariable, way in which Aristotle begins an example.

²⁰⁶ 1131a 19-21. I have retranslated this quite literally, Rackham translates it with more gloss as “It follows therefore that justice involves at least four terms, namely, two persons for whom it is just and two shares which are just.” Note also that the Greek texts include [*ta pragmata*] between *hois* and *duo*.

²⁰⁷ I. xiii. 1, 1373b 4-6.

(I say law on the one hand *idion* on the other hand *koinon*, *idion* on the one hand that which each draws for itself, and these on the one hand unwritten, on the other hand written, *koinon* on the other hand in accordance with nature.)

I say law²⁰⁸ the on the one hand *idion*
legô de nomon ton men idion

the on the other hand *koinon*
ton de koinon

idion on the one hand the each horizon-drawn
idion men ton hekastois hôrismenon

toward them
pros autous

and this on the one hand unwritten
kai touton ton men agraphon

the on the other hand written
ton de gegrammenon

koinon on the other hand the according nature
koinon de ton kata physin²⁰⁹

We have already had occasion to define *idion* as *propre*, and we will explore the translation of *koinon* presently. We will also look at what it means to speak of law that is “in accordance with nature,” but first notice that Aristotle is integrating contraries by laying one on top of another. Law is *idion*; law is *koinon*. The law that is *idion* is unwritten and written. Aristotle will go on to indicate contrary meanings of *koinon*. My translation highlights this integrated contrarity. The four other translations do not. The Cambridge translation presents these two sentences as follows:

²⁰⁸ “Law” is my uniform translation of νόμος, which means law as custom or custom as law. νόμος comes from the word that means an allotment of grazing land. I discuss it at some length at the end of Chapter IV, p. 192.

²⁰⁹ I. xiii. 1, 1373b 4-6.

Justice and Injustice have been defined as being relative to the laws and to the persons affected; and this in a twofold way. I mean that law is either particular or universal; the particular law being that which each community defines in respect of itself (a law partly written, partly unwritten); – the universal being that of nature.

The Loeb translation has

Justice and injustice have been defined in reference to laws and persons in two ways. Now there are two kinds of laws, particular and general. By particular laws I mean those established by each people in reference to themselves, which again are divided into written and unwritten; by general laws I mean those based upon nature.

The Oxford translation has

Just and unjust actions have been defined in reference to two kinds of law and in reference to persons spoken of in two senses. I call law on the one hand specific, on the other common, the latter being unwritten, the former written, *specific* being what has been defined by each people in reference to themselves, and *common* that which is based on nature; (italics in the original)

The Penguin translation has

Just and unjust acts are defined in relation to two kinds of law and in relation to persons in two ways.

By law I mean on the one hand particular law and on the other hand general law, special being that defined by each group in relation to itself, this being either unwritten or written down, and the general law being that of nature. (italics in the original)

Notice first that all four translations disagree with me about the word *hous* in *kai pros hous esti dixôs*. They all take *hous* as referring to the persons to whom the law applies. I take *hous* to refer to the two contraries into which law has been divided. Even with this difference, however, all four translations reflect the idea of integrated contrarity. None stresses it the way I do and two play it down significantly by using the word “two” only once.

The Oxford and Penguin translations use the word “two” twice, as I do, but the Cambridge and Loeb translations do not. This is because of a difference of opinion about the Greek text. The Loeb edition presents the Greek this way

*hôristai dê ta dikaia kai to adika pros te nomous [duo]
kai pros hous esti dichôs*

and adds a footnote explaining that *duo* is “Bracketed by Spengel, but retained by Roemer.” When a word or phrase is bracketed, one scholar is saying the word or phrase was not written by Aristotle, it was added by some other scholar and needs to be removed. The basis for these bracketings are often very, very technical. The Loeb edition accepts the bracketing of *duo* and my guess is that the Cambridge translation also accepted it. I do not and neither does the Oxford or Penguin translation. As I have explained I think *duo* is critical to what Aristotle is saying in the passage.

*

Before we look at what it means to speak of law that is “in accordance with nature,” we must return to the phrase *ton men idion ton de koinon*. The Cambridge translation presents this as “particular or universal.” The Loeb has “particular and general.” The Oxford has “on the one hand specific, on the other common.” The Penguin has “on the one hand particular law and on the other hand general law” and immediately changes “particular” to “special.”

Koinon is what characterizes life in a *polis*. Later in I xiii, The Loeb translation, having used “the community” several times, switches and translates *koinon* as “the State.” “...he who commits adultery or an assault is guilty of wrong against a definite individual, he who refuses to serve in

the army of a wrong against the State.”²¹⁰ The Cambridge translation also uses “the State” but the Oxford translation has “refusing to serve in the army wrongs the community” and the Penguin translation uses “community” as well. Life in a *polis* is collective, it is shared or common.

We can translate *koinon* as “in common” but this raises several problems. The first is that since law can be *koinon*, modern English lawyers will immediately say “Ah, common law!” But what does “common law” mean? In the first place there is “common law” and “Common Law” each of which has contrarity. One contrary of “Common Law” is “Civil Law” but Civil Law grows out of the *jus commune*, “the common law of Europe.”²¹¹ Another contrary of “common law” is “statute law.” A third contrary of “common-law” is “legal.” A “common-law spouse” is precisely one who is a “spouse,” but not a “legal” spouse.

The Greek phrase *nomous koinous* has as much contrarity as the English phrase “common law.” As Aristotle points out, just as law that is *idion* can be unwritten and written, so law that is *koinon* can be *koinon* in contrary ways. Law can be *koinon* in that all *polisses* have it in common; it can be *koinon* in that everyone in a *polis* has it in common. Thus Aristotle says,

toward which through-horizon-draw double
pros hous de diôristai *dichôs*

through-horizon-draw or toward the common
diôristai ê gar pros to koinon

or toward one of the common
ê pros hena tôn koinônountôn

(What has been divided is divided a second time, either for the common or one of the members of the common.)

it must be to do and not to do
ha dei prattein kai mê prattein

²¹⁰ I. xiii. 3, 1373b 24

²¹¹ J. H. Merryman, *The Civil Law Tradition*, (Stanford, 1985) p. 8-12.

because the unjust acts and the just acts double it is
dio kai tadikêmata kai ta dikaiômata dichôs estin

to do injustice and justice-to do
adikein kai dikaiopragein

or toward one and horizon-drawn
ê gar pros hena kai hôrismenon

or toward the common
ê pros to koinon

(To do injustice and to practice justice either towards
 one divided off or toward the common.)

the adulterer and assaulter he does injustice
ho gar moixeuôn kai typtôn adikei

someone the horizon-drawn
tina tôn hôrismenôn

the not be a soldier the common
*ho de mê strateuomenos to koinon*²¹²

(He who commits adultery or assault does injustice to
 someone distinct, he who will not fight in the army to
 the common.)

It is clear that Aristotle is integrating contrarities here and to show how committed he is to the integration of contrarities, I now return to a passage I omitted earlier. It comes immediately after the phrase *κατὰ φύσιν* (*k'ta' foo' sin*), in accordance with nature. In it Aristotle explains what it means to speak of a law that is “in accordance with nature.” In the passage I omitted, Aristotle says:

There is by nature a common justice and injustice,
 which everyone somehow divines, even if they have

²¹² I. xiii. 3, 1373b 18-24

nothing in common with each other and have not made any agreement (put anything together).²¹³

This passage is always cited to show that Aristotle believed in natural law. I have translated the passage in a way that makes the English easier to understand but does not follow the Greek word order. As I will explain in a moment, this changes the meaning of the passage, but before I do that, I must explain that it is always said that in Greek, the word order does not matter.

On the one hand this is true, on the other hand it is not. Word order does not matter in Greek in the same way as it matters in English, but it does matter. English uses word order in a way Greek does not. In English, if you want to report the fact that a man hit a boy, you put the man first and the boy second: “the man hit the boy.” “The boy hit the man” means something different. In Greek, it does not matter whether “the man” or “the boy” comes first because in Greek “the man” is spelled one way if he is doing something – *ἄνθρωπος*, *on' throw poss*, and a different way if he is having something done to him – *ἄνθρωπον*, *on' throw pon*. This is called “case.” A man who does an action is in the nominative case, a man who has the action done to him is in the accusative case. The same is true for “the boy,” so in Greek, you would know it was the man who hit the boy, even if the word order were “the boy hits the man.” This is what it means to say word order does not matter in Greek.

But word order does matter in Greek. As Aristotle himself points out, the contrary of *anthrôpô einai* can be

not a human to be
mê anthrôpô einai

and

not to be a human
*mê einai anthrôpô*²¹⁴

²¹³ I. xiii. 2, 1373b 6-9

²¹⁴ *Metaphysics*, IV. iv, 1007a 24-25.

The placement of “not” counts and the cases do not work the same way around the verb “is” as they do around the verb “hit.” With “is” the cases are the same on both sides of the verb, so word order is critical.²¹⁵ Aristotle remarks on this himself when he points out that it is possible to assert that what is is not and what is not is. When he speaks of this, Aristotle uses two phrases that have exactly the same words in different orders and mean contrary things.

the belonging as not belonging
to hyparchon hōs mê hyparchon

the not belonging as belonging
*to mê hyparchon hōs hyparchon*²¹⁶

We will speak more of cases and word order in Chapter V. Here it is enough to notice that word order can matter in Greek and in Greek, the passage I translated earlier says

it is the divined by all natural
esti gar ho manteuontai ti pantes physei

common justice and injustice
koinon dikaion kai adikon

would none common toward each other
kan mêdemia koinônia pros allélous

or nothing together-put
*ê mêde synthêkê.*²¹⁷

²¹⁵ Another example in Aristotle’s works is in *Ethics* (1131a 24), where Aristotle says fights and complaints arise when

the equals not equally the not equals equally
hé isoi mé isa hé mé isoi isa

“When equals possess or are allotted equal shares, or persons not equal equal shares.”

H. Rackham, *The Nichomachean Ethics* (Harvard, 1926)

²¹⁶ *On Translation (Dei Int.)* VI. 17a 28-9. J.L. Ackrill translates the passage:

Now it is possible to state of what does hold that it does not hold, of what does not hold that it does hold.

The Complete Works of Aristotle: The Revised Oxford Translation, J. Barnes ed. (Princeton Univ. Press, 1984) The date of the translation is not given.

²¹⁷ I. xiii. 2, 1373b 6-9

(There is what is divined by everyone a common justice and injustice, even if they have nothing in common with each other and have not made any agreement (put anything together).)

Retranslated this way, Aristotle can be read as saying everyone speaks as though they think there is law in accordance with nature, and notice that Aristotle does not use the word “think.” He uses the word *manteuontai*, which has to do with oracles and signs. Aristotle does not say there is law in accordance with nature; he says people *say* there is law in accordance with nature, people *speak as if* there were such a thing and they divine the existence of this natural law through signs and oracles. People are particularly fond of speaking about natural law in speeches. That is the biggest trouble with natural law; people only say a particular law is natural when someone else asserts either that it is unnatural or that a contrary law is natural.

On the one hand Aristotle believes in natural law, on the other hand he does not. He says expressly several times in his works that mistakes arise in nature²¹⁸ and our idea of natural law does not include the possibility of mistakes. This is true for both those who believe in natural law and those who do not believe in it. More importantly, in *Ethics*, Aristotle draws a distinction between nature and law that is very sharp. He plays on the similarity between the Greek words νόμισμα, money (*gnaw' miss ma*) and νόμος, law (*gnaw' moss*). He says money has the name *nomisma*, because

not natural but legal it is
*ou physei alla nomô esti*²¹⁹

This is as clear a distinction as one could draw between nature and law so while we can say Plato believed in Natural Law, we have to be extremely careful when we say Aristotle believes there is law in accordance with nature. We have to remember that both “nature” and “law” mean contrary things, so “natural law” is a very integrated contrariness.

That Aristotle was aware of this can be seen from the remainder of the passage.

²¹⁸ E.g. *Politics* I. ii, 1254b 33, I.ii.19, 1255b 3

²¹⁹ V. v, 1133a 31

For instance Sophocles' Antigone seems to say it is just, though forbidden, to bury Polynices, since this is naturally just.

Not for now or yesterday but forever does this live,
though no one knows by whom it was said

And as Empedocles said about not killing living things, this is not for some, on the one hand, just, for some, on the other hand, not just

but a law for all through wide-ruling air unbroken
set even through boundless earth²²⁰

Sophocles says some laws are timeless. Empedocles says some laws apply everywhere. These are not the same; they are contraries and the final quotation given by Aristotle makes this contrariness even more clear.

And as Alcidimas says in his *Messeniakus*

The quotation from Alcidimas is missing in Aristotle's text. An unnamed medieval scholar supplied it.

free outsend all god none slave
eleutherous aphêke pantas theos oudena doulon

the nature making
hê physis pepoiêken

This passage is quoted by the Cambridge, the Loeb, the Oxford and the Penguin translations. The translations all vary slightly.

Cambridge: God has given freedom to all men. Nature has made no man a slave.

Loeb: God has left all men free; nature has made none a slave.

²²⁰ I. xiii. 2, 1373b 9-15

Oxford: God has left all free; nature has made no one a slave.

Penguin: God sent all men forth free, none has nature created a slave.

That Aristotle should quote this passage is remarkable because in *Politics*, he says expressly that some men are naturally slaves. Even there, of course, he does not commit himself without contrariness.

That on the one hand therefore it is by nature that some are on the one hand free some on the other hand slaves, is obvious ... That on the other hand those who say the opposite in some sense say what is right is not hard to see.²²¹

*

I will not retranslate the whole of *Rhetoric* I xiii. I will jump to the end to look at a passage in which Aristotle talks about law and equity. Before I do so, I present a passage from the middle of I xiii to show that Aristotle continues to follow the method of integrating contrarities.

... of just acts and unjust acts there are two kinds, that on the one hand written, that on the other hand unwritten, of on the one hand those laws that are spelled out, we have already spoken, of those on the other hand unwritten, there are two kinds ...²²²

*

The last passage in *Rhetoric* I xiii begins

²²¹ I. v. 11, 1255a 1

²²² I. xiii. 2, 1374a 18-21

the *epieikes* seems justice to be
to gar epieikes dokei dikaion einai

it is *epieikes* the against the written law justice
*esti de epieikes to para ton gegrammenon nomon dikaion*²²³

The word ἐπιεκέες (*eh, pee, hay, kes^{trrel}*) is normally translated with some form of “equity.” Thus, for instance, the Cambridge translation presents the passage as

For the equitable seems to be just, and equity is a kind of justice, but goes beyond the written law.

The Loeb translation has

For that which is equitable seems to be just, and equity is justice that goes beyond the written law.

The Penguin translation has

For the *equitable* is held to be right, and *equity is right beyond the written law*. (italics in the original)

These are not all exactly the same, but they are very similar, which, as we have seen, is not what we usually find in translation. It is what we expect, however. We expect what Aristotle says to sound virtually the same in all translations and in these translations of this particular phrase it does. There is still the problem we noticed earlier about whether to translate *dikaion* as “just” or “right” and the Cambridge translation uses “kind of justice,” which may or may not be different from “justice,” (We will look at this question in Chapter IV.) but basically these translations are all the same.

The Oxford translation is quite different. It does not use “equity” to translate the word *epieikes*.

Fairness, for example, seems to be just; but fairness is justice that goes beyond the written law.

²²³ I. xiii. 13, 1374a 26-28

A footnote is added to explain the use of “fairness” instead of “equity.”

Epieikes, often translated “equity”; but *epieikes* is a broader concept and, unlike equity, applies to both criminal and civil law.

This footnote is pointing to a very important problem. “Equity” has a special meaning in English. That is what it means to say equity does not apply to criminal law. The French “*équité*” does apply to criminal law. So does the Spanish “*equidad*” and the Italian “*equità*.” It is only in England that the word “equity” does not apply to criminal law and this is because of certain historical peculiarities of Common Law. Aristotle would say these are *συμβεβηκός* – coincidental – and do not affect meaning.

In England, the word “equity” is closely linked to a special set of medieval courts and the law that was applied in those courts. The specialness of the English meaning of “equity” is summed up by W. Holdsworth:

The distinction between the strict rule of law and modifications of that law on equitable or moral grounds is a distinction known to many systems of law; and it was familiar to English lawyers from the twelfth century onwards. It is not therefore the distinction between law and equity which is peculiar to English law. What is peculiar is the vesting of the administration of law and equity in two quite separate tribunals. The result is that the distinction between law and equity has in England been given a sharpness and permanence which it possesses in no other legal system.²²⁴

For the Oxford translation, the fact that English “Equity” refers to special courts rules it out as a translation for *epieikes*, but as we shall see, one highly technical aspect of English Equity, that in theory it creates no precedents and only works in particular cases, is precisely applicable to what Aristotle says about *epieikes*. “Equity” is not ruled out as a translation for *epieikes* because it has a special meaning in English. It is ruled out for far deeper reasons. “Equity” is a bad name for what was done in the Courts of Equity. The English word “equity,” like the French word “*équité*,” and the

²²⁴ *A History of English Law* (1903) Vol I, p. 446

similar words in other languages, comes from the Latin *aequus*, which is also the root of the English word “equal,” the French word “*égal*” and the similar words in other languages.

Translating from Greek into Latin and then into English, though often unavoidable, is a source of great danger.²²⁵ Because “equity” and “equality” are linguistically related, it looks as if what is equal is equitable. *Epieikes* is not equality, or rather on the one hand it can be equality, but on the other hand it does not have to be.²²⁶ As Aristotle remarks in *Politics*, “It seems equality is justice, and it is, but not for all, but for equals; and inequality seems to be justice, and it is, but not for all, but for unequals.”²²⁷ This point has been made most strongly recently by feminists, who ask whether equality for women means being treated the same as men or differently. In some situations it is equitable to treat women the same as men. In some situations it is not. Neither *epieikes* nor “equity” is equality. Both are a matter of knowing when equality is right and when equality is not right.

More important, neither *epieikes* nor “equity” applies to groups of cases. They do not apply to men or women. They apply to this or that particular woman or man in this or that particular situation. Holdsworth speaks somewhat incorrectly of the “distinction between the strict rule of law and modifications of that law on equitable or moral grounds” Equity did not *modify* the law. The theory of English Equity was that the law was the Law and could not be changed. Equity applied to one case at a time. The Law was the law, but in this one case, Equity said, the defendant might be ordered, on pain of his conscience, not to take advantage of his legal rights. Why? Because it was not *epieikes* for him to do so.

In *Politics* Aristotle says that νόμος (*no' mos*), law or custom, is τάξις (*tax' iss*), arrangement or order.²²⁸ *Epieikes* is not a *taxis*. *Epieikes* is not an arrangement. *Epieikes* is remedial; it fixes particular uncomfortable results of the legal arrangement. *Epieikes* can mean “fitting.” It is about

²²⁵ In the introduction to his translation of *Politics*, p. lxiv, Barker quotes J. Myres, *The Political Ideas of the Greeks*. “With the necessary translation of Greek philosophical nomenclatures into Latin ... grave disaster happened.”

²²⁶ I do not like to take a logical approach to Aristotle, but in *Politics*, (III xii., 1282b 18) Aristotle says it seems to everyone that justice is some sort of equality. If *epieikes* is an addition to justice, *epieikes* is not equality.

²²⁷ III. ix. 1, 1280a 11-13.

²²⁸ Aristotle says this twice in *Politics*. III.x., 1287a 18, and IV iv., 1326a 30. We will look further at these comments in Chapter V.

changing an uncomfortable legal result and making it fit comfortably. *Stare decisis* is a principle of common law. Each case is a precedent for the cases that follow. Civil Law does not have *stare decisis*, but it has what we might call *stare codesis*, stick with what the Civil Code says. *Epieikes* does not *stare* anything. *Epieikes* looks at one case at a time, with no background except what is *epieikes*.

Epieikes is an unsystematic natural law. I have never heard this point made before, partly I suspect because all the natural law I have ever heard about was supposed to be systematic. Unsystematic natural law is a contradiction in terms. Law is arrangement, so natural law must be a natural arrangement. It must be systematic. *Epieikes* is unsystematic but it is natural in that people are supposed to just know it. This is one of the foremost characteristics of natural law: people just know it. Thus, Aquinas says:

the light of natural reason by which we discern what is good and what evil, is nothing but the impression of divine light on us.²²⁹

Natural law is always supposed to have the form: it is always wrong to do such and so or it is always right to do such and so. The form of *epieikes* is totally different. In the first place there is no “always” in *epieikes*. In the second place, there is no “such and so” in *epieikes*. Most important, there is no “right” in *epieikes*. *Epieikes* does not tell us what it is right to do. *Epieikes* is like Socrates’ *daimonion*. It tells us what not to do. It says this or that particular result of the legal arrangement is wrong and must not be allowed.

Treating an unequal unequally was one of the original bases of English Equity. One allegation a petitioner in the Courts of Chancery or Equity could make from the earliest days was that he was poor.

He complains that for some reason or another he can not get a remedy in the ordinary course of justice and yet he is entitled to a remedy. He is poor, he is old, he is sick, his adversary is rich and powerful, will bribe or will intimidate jurors, or has by some trick or some accident acquired an advantage of which the ordinary courts with their formal procedures will not deprive

²²⁹ *Summa Theologiae*, Q. 91, a. 2.

him. The petition is often couched in piteous terms, the king is asked to find a remedy for the love of God and in the way of charity. Such petitions are referred by the king to the Chancellor. Gradually in the course of the fourteenth century petitioners instead of going to the king, will go straight to the Chancellor, will address their complaints to him and adjure him to do what is right for the love of God and in the way of charity. Now one thing that the Chancellor may do in such a case is to invent a new writ and so provide the complainant with a means of bringing an action in a court of law. But in the fourteenth century the courts of law have become very conservative and are given to quashing writs which differ in material point from those already in use.²³⁰

In this paragraph, Maitland has combined the two bases of English Equity. One is pity; the other is reason. Equality is not an aspect of pity. Pity is based on inequality. Equality is an aspect of reason.

In Chapter II, I remarked that the common law, the Writ System, was complicated but not systematic. The point to notice here is that the complexity of the writs became quite rigid. The writs were treated as if they were systematic, as if they recognized all the different ways in which a person could be injured. At medieval common law, if you were “disseised” of your land – if your land was taken from you – you could get a writ that would force the person who disseised you to come into court and answer your charges. But the writ system was so complicated that there was one particular writ if the land that had been taken from you had been given to you by your grandfather, and a different writ if it had been given to you by your grandmother. If the writ you used to get into court said the land had been given to you by your grandfather and it turned out that the land had been given to you by your grandmother, your case was thrown out.

Each writ created a particular “form of action” and because the different writs had been created at different times, each form of action

... implied a particular original process, a particular mesne process, a particular final process, a particular mode of pleading, of trial, of judgment. But further to a very

²³⁰ Maitland, *Equity* (Cambridge, 1909) p. 5

considerable degree the substantive law administered in a given form of action has grown up independently of the law administered in other forms. Each procedural pigeon-hole contains its own rules of substantive law and it is with great caution that we may argue from what is found in one to what will probably be found in another; each has its own precedents. It is quite possible that a litigant will find that his case will fit some two or three of these pigeon-holes. If this be so he will have a choice, which will often be a choice between the old, cumbrous, costly, on the one hand, the modern, rapid, cheap, on the other. Or again he may make a bad choice, fail in his action, and take such comfort as he can from the hints of the judges that another form of action might have been more successful. The plaintiff's choice is irrevocable; he must play the rules of the game that he has chosen. Lastly he may find that, plausible as his case may seem, it will not fit any one of the receptacles provided by the courts and he may take to himself the lesson that where there is no remedy there is no wrong.²³¹

This is the equal application of rules taken to its furthest extreme. English Equity was a response to the rigid technicality of English Common Law. The Courts of Chancery did two contrary things. On the one hand, they administered charity, which is not based on equality; on the other hand they overcame technicalities, which are based on equality. For instance, it could be well known and fully provable by oral evidence that a loan had been made, but if the bond, the piece of paper recording the loan, was accidentally lost, the medieval English law courts would not require the loan to be repaid. The law courts would not permit oral evidence of the loan. The courts in France had no such rule.

Under the writ system, English law developed certain peculiar technical injustices. It treated creditors 'unequally' depending on the accident of whether the record of their loan had been lost or not. A special set of courts grew up under the authority of the Chancellor to deal with some of these special technical injustices or inequalities. These courts did not do equity; they remedied certain inequities. These inequities had two forms:

²³¹ Maitland, *Forms of Action* (Cambridge, 1909, 1987) p. 3-4

inequalities where there should be equality and equality where there should be inequality.

Here, again, is what Aristotle says about *epieikes*.

the *epieikes* seems justice to be it is *epieikes* alongside the written law justice

*to gar epieikes dokei dikaion einai esti de epieikes to para ton gegrammenon nomon dikaion*²³²

The four translations all say *para ton gegrammenon nomon* means “beyond the written law.” It does, but *para* also means “alongside” and *paranomos* is “against-law.” The question of whether Equity ran beyond, alongside or against Law plagued English law. The Courts of Chancery applied “equity and conscience” instead of “law.” But they insisted that they did not reverse the legal rules or the decisions of the Courts of Law. They simply required people who had or could get orders from the Courts of Law not to take advantage of their legal rights. Thus, for instance, they would require a person who owed money to repay it, even if the bond was lost.

But only in certain circumstances. Originally, the idea of the Courts of Chancery was that particular cases needed to be taken out of the ordinary legal stream. The law, the *taxis*, came to the wrong result, to an uncomfortable result, to a result that could not be tolerated. That result had to be changed, but the law did not have to be changed. In Equity, there was originally no *stare decisis*. Decisions by the Courts of Equity were not precedents. They decided one case and one case only. Gradually a body of rules or principles was created for determining when to issue an order requiring someone not to take advantage of a legal right. These rules or principles, known as “equity” or “Equity,” went from being a way to undo a legal result that was intolerable, to a second legal system, a second *taxis*. Eventually the rules of Equity became fixed and formal and in the nineteenth century, Dickens portrayed them in *Bleak House* as the most hidebound legal system.

The remnants of this system can be seen today in the revocable *inter vivos* trust. This equitable remedy is now seen as an alternative to making a

²³² I. xiii. 13, 1374a 26-28

will. From a way to overcome a problem with some wills, it has become part of the *taxis* of succession law. But as Maitland said, the fourteenth century Chancellors did not think

... they had to administer any body of substantive rules that differed from the ordinary law of the land. They were administering the law but they were administering it in cases which escaped the meshes of the ordinary courts. The complaints that come before them are in general complaints of indubitable legal wrongs, assaults, batteries, imprisonments, disseisin and so forth – wrongs of which the ordinary courts take cognizance, wrongs which they ought to redress. But then owing to one thing and another such wrongs are not always redressed by the courts of law. ...²³³

Complaints against this extraordinary justice grow loud in the fourteenth century. In history and in principle it is closely connected with another kind of extraordinary justice which is yet more objectionable, the extraordinary justice that is done in criminal cases by the king's council.

Because this council sat in room with stars on the ceiling it was called Star Chamber. Star Chamber was

the court made up of judges and privy councilors that grew out of the medieval king's council as a supplement to the regular justice of the common-law courts. It achieved great popularity under Henry VIII for its ability to enforce the law when other courts were unable to do so because of corruption and influence. When, however, it was used by Charles I to enforce unpopular political and ecclesiastical policies, it became a symbol of oppression to the parliamentary and Puritan opponents of Charles and Archbishop William Laud. It was therefore, abolished by the Long Parliament in 1641.²³⁴

Star Chamber was the “Court of Criminal Equity.” This explains the point made in the Oxford translation of *Rhetoric* about English Equity not

²³³ Maitland, *Equity*, (Cambridge, 1909) p. 6

²³⁴ *The New Encyclopædia Britannica*, 15th ed.

applying to criminal law. It also raises an important issue about equity. We will see in a moment that Aristotle says *epieikes* means being lenient with people who aren't really bad. But it also means being harsh with people who are bad. In England, for various historical reasons, the only "equity" in criminal cases came to be the presumption of innocence. Recently, Courts of Criminal Equity have returned in the United States as part of the "War on Terrorism." They have an equity contrary to Equity.

*

On the one hand *para* means "beyond," on the other hand it means "alongside." On the other other hand it means "against." In England, till Star Chamber was abolished, Equity ran *para* Law in both criminal and civil cases. After the abolition of Star Chamber, Equity had no role in criminal cases; they were solely a matter of Law (or to put the matter another way, adherence to written rules and the presumption of innocence became the only equity in criminal cases). At about the same time as Equity ceased to run *para* Law in criminal cases, it was decided that it ran beyond Law in civil cases. This was decided in the *Earl of Oxford's Case*.²³⁵ A judgment was obtained in a case in the Court of Common Pleas, a Court of Law. The losing litigant appealed for relief to the Court of Chancery. The Court of Chancery issued a common injunction, forbidding the enforcement of the Common Law order. The litigant who had gotten the first order persisted in his attempts to have it enforced. The Court of Chancery applied the law of equitable contempt and had him goaled. The Court of Common Pleas issued a writ of habeas corpus, requiring the release of the goaled litigant.²³⁶

The two courts were hopelessly stalemated and their respective heads, the Chancellor, Lord Ellesmere, and the Chief Justice of the Court of Common Pleas, Lord Coke, were both determined to uphold the authority of their courts. Ellesmere and Coke put the case before the King, James I, the "wisest fool in Christendom." James took advice from his Attorney General, the philosopher Francis Bacon, and ruled that Law must defer to Equity.²³⁷

Lord Ellesmere said:

²³⁵ *Oxford's (Earl) Case* (1615) 1Rep Ch 1; 21 ER 485, L.C.

²³⁶ Conflict between two sovereign legal bodies is discussed in S. Wexler, A. Irvine, *Aristotle and the Rule of Law*, 23 POLIS 116, 138 (2006).

²³⁷ This solution held until *Judicature Act* was passed in 1873. Depending on how you see it, this act either abolished the Courts of Chancery or merged them with the Courts of Law.

The Cause why there is Chancery is for that Men's Actions are so divers and infinite, That it is impossible to make any general Law which may aptly meet with every particular Act, and not fail in some Circumstances.²³⁸

He added that the Chancellor existed "to soften and modify the extremity of law."

Aristotle's description of *epieikes* is uncannily like Lord Ellesmere's:

together-walk this the on the one hand without will
symbainei de touto ta men akontôn

the on the other hand with will of the lawplacers
ta de hekontôn tôn nomothetôn

without the will on the one hand when they are hidden
akontôn men hotan lathê

with will on the other hand
hekontôn d'

when not able to through-horizon-draw
hotan mê dynôntai diorisai

but necessary on the one hand by-whole to say
all' anankaion men ê katholou eipein

not on the other hand but that about the many
mê ê de all' hôs epi to polu

and which not easy to through-horizon-draw
kai hōsa mê rhadion diorisai

because no-limit
di' apeirian

²³⁸ Ibid at 486.

for example the wounding with iron how big and what kind
hoion to trôsai sidêrô pêlikô kai poiô tini

what's left over would forever be through-numbering
hypoleipoi gar an ho aiôn diarithmounta

if there is no through-horizon drawline
an oun ê adioriston

must law to be made
deê de nomothetêsai

necessary simply to speak
anankê haplôs eipein

so that would a ring having he lifts the hand or clashes
hôte kan daktulion echôn eparêtai tèn cheipa ê pataxê

according on the one hand to the written law
kata men ton gegrammenon nomon

inside it is and illegal (unjust)
enochos esti kai adikei

according on the other hand the true not illegal (unjust)
kata de to alêthes ouk adikei

and the *epieikes* this it is
*kai to epieikes touto estin*²³⁹

Aristotle's notes are choppy and leave a great deal unsaid. Here is my retranslation smoothed out a little.

(This happens on the one hand without the will, on the other hand with the will of the lawgivers. Without the will on the one hand, when they forget with the will on the other hand when they are not able to draw a line but it's necessary on the one

²³⁹ I xiii. 13, 1374a 28-1374b 1

hand that something covering everything be said not there is on the other hand but that which is for many and which not easy to draw a line because without limit. For example wounding with iron how big and what kind what's left over would forever be numbering. If there is no line but there has to be a law made, it is necessary to speak simply so that having a ring he lifts his hand or strikes, according on the one hand to the written law it is inside and illegal (unjust) according on the other hand to the true, not illegal (unjust) and *epieikes* is this.)

Here are four translations. They differ considerably, but in all of them, Aristotle sounds clear and smooth. Reading them enables one to see how smooth, sophisticated translation changes, if not the meaning, at least the tone of what Aristotle says. Here is the Loeb translation:

These omissions are sometimes involuntary, sometimes voluntary on the part of the legislators; involuntary when it may have escaped their notice, voluntary when, being unable to define for all cases, they are obliged to make a universal statement, which is not applicable to all, but only to most cases; and whenever it is difficult to give a definition owing to the number of cases, as for instance, the size and kind of an iron instrument used in wounding; for life would not be long enough to reckon all the possibilities. If then no exact definition is possible but the legislation is necessary, one must have recourse to general terms ; so that if a man wearing a ring lifts up his hand to strike or actually strikes, according to the written law he is guilty of wrongdoing, but in reality he is not; and this is a case for equity.

Here is the Cambridge translation:

This margin is left by legislators, sometime voluntarily and sometimes involuntarily; involuntarily, when the point escapes their notice; voluntarily, when they are unable to frame a definition, and it is necessary to lay down an absolute rule, but not really possible to lay down more than a general rule; also in cases which experience makes it hard to define, -- such as the wounding with iron of a given size and kind; for life would be too short for a person who tried to enumerate the cases. If then,

it is impossible to be definite, yet necessary to legislate, one must speak generally; and so, if even the wearer of a ring lift his hand against another or strike him, he is guilty of a wrong under the written law, but not in reality; and here equity comes in.

Here is the Oxford translation:

This happens sometimes from the intent of the legislators but sometimes without their intent when something escapes their notice; and [it happens] intentionally when they cannot define [illegal actions] accurately but on the one hand must speak in general terms and on the other hand must not but are able not to take account of most possibilities, for example, how long and what sort of weapon has to be used to constitute “wounding” for a lifetime would not suffice to enumerate the possibilities. If then, the action is undefinable when a law must be framed, it is necessary to speak in general terms, so that if one wearing a ring raises his hand or strikes, by the written law he is violating the law and does wrong, when in truth he has [perhaps] not done any harm, and this [latter judgment] is fair.

Here is the Penguin translation:

This arises sometimes at the wish, sometimes not at the wish of the lawgivers – the latter when they overlook it, and the former when they cannot give a universal definition, but while it is necessary for them to give a general rule they cannot do so but only give one that holds for the most part, and in such cases as are not easy to define through their unfamiliarity, such as the question of wounding what kind of victim and with what length of sword there must be punishment. If then the matter should be undefined, but there should be need for legislation, it is necessary to speak generally, so that if a man wearing a ring would raise his hand or actually strike another, then he is guilty under the written law and commits a crime, but in reality commits no crime – a case of equity.

*

Lord Ellsmere's comments about Equity were made in a civil case; almost everything Aristotle says about *epieikes* has to do with criminal cases. For Aristotle, *epieikes* is about punishment and it is about less punishment, rather than more punishment. This is striking because Aristotle is and is always portrayed as very conservative. In *Politics*, he says the single most conservative thing one can say:

nor must to think each for itself something to be the citizen
oude chrê nomizein auton hautou tina einai tôn politôn

but all of the *polis*
alla pantas tês poleôs

We must not regard a citizen as belonging just to himself, we must rather regard every citizen as belonging to the city.²⁴⁰

People who say this often say the times we have to move outside the *taxis* are when people who deserve serious punishment do not get it. Remember, the description quoted earlier. Equity “achieved great popularity under Henry VIII for its ability to enforce the law when other courts were unable to do so because of corruption and influence.” Aristotle does not say *epieikes* is a matter of more strictness; he says it is a matter of more leniency.

*

We now come to a long passage that must be examined with care because it has not been properly understood. I will begin by noting two words: *mochthêrias* and *ponêrias*. They mean something like “wickedness” and “badness,” which are obviously quite close.

if it is the said the *epieikes*
ei d' esti to eirêmenon to epieikes

appears how it is the *epieikes* and not *epieikes*
phaneron poia esti to epieikê kai ouk epieikê

²⁴⁰ VIII. i, 1337a 27-29. The smooth translation is from E. Barker, rev. R.F. Stalley, *Aristotle Politics* (Oxford, 1995) p. 298.

and how not *epieikes* humans
kai poioi ouk epieikeis anthrôpoi

of that must together-think to have
eph hois te gar dei syngnômên echein

epieikes these
epieikê tauta

and the missing the marks and the unjust doings
kai to ta hamartêmata kai ta adikêmata

not the equal worthy nor the not-luckies
mê tou isou axioun mêde ta atychêmata

it is not-luckies on the one hand
esti d' atychêmata men

which against-words and not from *mochthêrias*
hosa paraloga kai mê apo mochthêrias

missing the marks on the other hand
hamartêmata de hosa

not against-law and not from *ponêrias*
mê paraloga kai mê apo ponêrias

injustices on the other hand
adikêmata de

which neither against-law from *ponêrias* it is
hosa mête paraloga apo ponêrias t' estin

the through upon-heart from *ponêrias*
*ta gar di' epithymian apo ponêrias*²⁴¹

Here is my retranslation, smoothed out a bit.

²⁴¹ I xiii, 15, 1374b 2-10

(If what has been said is *epieikes*, it is apparent how *epieikes* and how not *epieikes* and in what way people are not *epieikes*. Of that which must be pardoned, this is *epieikes*; and missings of the mark and injustices not the same in worth, nor bad luck; bad luck is on the one hand that which is beyond (or beside) explanation and not from wickedness, missings of the mark on the other hand are that which is not beyond explanation and not from badness; injustices on the other hand that which is not beyond explanation and from some badness; for these are by desire from badness.)

Here are four translations of this passage. The Loeb translation has:

If then our definition of equity is correct, it is easy to see what things and persons are equitable or not. Actions which should be leniently treated are cases for equity; errors, wrong acts, and misfortunes, must not be thought deserving of the same penalty. Misfortunes are all such things as are unexpected but not vicious; errors are not unexpected, but are not vicious; wrong acts are such as might be expected and vicious, for acts committed through desire arise from vice.

The Cambridge translation has:

Now if equitable is such as it has been described, it is clear what sorts of things and persons are equitable and inequitable. Those acts are equitable, which are to be excused. It is equitable not to take the same account of mistakes, of wrongs, and of misfortunes: misfortunes being things which could not be reckoned upon, and which do not result from vice; mistakes, things which might have been reckoned upon, but which do not result from vice; wrongs, things which were reckoned upon, and which resulted from vice.

The Oxford translation has:

If, then, fairness is what has been described, it is clear what kind of actions are fair and what are not fair and what kind of human beings are fair. Those actions that [another person]

should pardon are fair, and it is fair to regard personal failings [*hamartêmata*] and mistakes [*atyxêmata*] as of equal seriousness with unjust actions. Mistakes are unexpected actions and do not result from wickedness; personal failings are not unexpected and do not result from wickedness; [and] unjust actions are not unexpected and do result from wickedness. (orthography as in the original)

The Penguin translation has:

Now if *equity* is what we said, it is clear what sort of things are *equitable* and what not, and what sort of men are *inequitable*:

The things to which one should accord forgiveness are equitable and it is equitable not to consider errors and crimes on the same basis, nor misfortunes. For misfortunes are the kind of thing that are unexpected but not from wickedness, and errors are not unexpected but not from wickedness, while crimes are both not unexpected and from wickedness; for things done out of desire are from wickedness. (italics in the original)

In addition to the general point about how these translations smooth out what Aristotle says, there are several particular things to notice. First, the Loeb translation of this passage ends with “for acts committed through desire arise from vice” and the Penguin translation ends with “for things done out of desire are from wickedness.” The Cambridge and Oxford translations have nothing like this. They, apparently, bracket the words *ta gar di’ epithymian apo ponêrias*. None of the four translations remarks on this point.

Second, Aristotle says that “missing the mark and the unjust doings not the equal worthy nor the not-lucky.” He distinguishes missings of the mark from injustices and then distinguishes bad luck from both missings of the mark and injustices. He continues this distinction by using *mochthêrias* in connection with bad luck and *ponêrias* in connection with missings of the mark and injustices. None of the translations conveys this distinction.

The Loeb translation lumps all three together – “errors, wrong acts, and misfortunes, must not be thought deserving of the same penalty.” So does the Cambridge translation – “It is equitable not to take the same

account of mistakes, of wrongs, and of misfortunes.” So does the Oxford translation – “it is fair to regard personal failings [*hamartêmata*] and mistakes [*atykhêmata*] as of equal seriousness with unjust actions.” Only the Penguin translation keeps Aristotle’s arrangement – “it is equitable not to consider errors and crimes on the same basis, nor misfortunes,” but like all the others, the Penguin translation renders *mochthêrias* and *ponêrias* as if they were the same word. It uses “from wickedness” for both, as does the Oxford translation. The Loeb translation uses “vicious” for both and the Cambridge translation uses “from vice” for both.

Aristotle uses two different words, *mochthêrias* and *ponêrias*, and he uses *mochthêrias* only in connection with bad luck, which he has just set off from missings of the mark and injustices. Aristotle observes that we only talk about missings of the mark, injustices and bad luck, when something bad happens. Injustices are intentionally done bad things. Missings of the mark are bad things that are intentionally done, but without ill will. Bad things that have happened from injustices and missings of the mark could both have been avoided if people had acted differently. Bad things that have happened because of bad luck could not have been avoided. Injustices are done and mistakes are made; bad luck just happens.

In this passage law, philosophy, and translation come together. At the risk of making both Aristotle and law sound more coherent than they are, one might say that in this passage Aristotle is pointing to a distinction lawyers know as *actus reus/mens rea*. Injustices have both *actus reus* and *mens rea*. Missings of the mark have *actus reus* but not *mens rea*. Bad luck has neither *actus reus* nor *mens rea*. That is the legal point. The philosophical point is that all these translations miss the sense of this passage because they do not think in terms of integrated contrariness. Finally, there is a point about translation. Translations use different words when Aristotle uses the same word and the same word when Aristotle uses different words. They make what Aristotle says clearer and smoother in English. On the one hand this is useful; on the other hand it leads to mistakes.

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There is one last passage at which I wish to look.

and for the humans to together-know *epieikes*
kai to tois anthrôpinois synginôskein epieikes

and the not toward the law but toward the law-maker to look
kai to mê pros ton nomon alla pros ton nomothetên skopein

and not toward the word(s)
kai mê pros ton logon

but toward the thought of the law-maker
alla pros tên dianoian tou nomothetou

and not toward the practice but toward the before-taking
kai mê pros tên praxin alla pros tên proairesin

and not toward the part but toward the whole
kai mê pros to meros alla pros to holon

not how some now but how some
mêde poios tis nun alla poios tis

in always or for the many
ên aei ê hôs epi to poly

and to remember rather what happens good or bad
kai to mnêmoneuein mallon hôn epathen agathôn ê kakôn

and good which heppened rather than made
kai agathôn hôn epathe mallon ê epoiêsen

and the up-being injustice
kai to anechesthai adikoumenon

and the rather word to want to judge than deed
kai to mallon logô ethelein krinesthai ê ergô

and the in arbitration rather than in court wants to go
kai to eis diaitan mallon ê eis dikên boulesthai ienai

the arbitrator the *epieikes* looks at
ho gar diatêtês to epieikes hora

the juror the law
ô de dikastês ton nomon

and this purpose arbitrators
kai toutou heneka diatêtês

discovered so that *epieikes* is strong
heurethê hopôs to epieikes ischuê²⁴²

Here is my retranslation, smoothed out a bit.

(And for men pardon is *epieikes*. And not to the law but to the lawmaker to look, and not to the words but to the thought of the law maker, and not to the practice but to the choice, and not to the part but to the whole, not how someone now, but how someone would be forever or mostly. And remember rather what feels good rather than bad and good felt rather than made. And bear up under injustices. And rather by word should want to judge than by deed. And to arbitration rather than to court want to go; the arbitrator *epieikes* looks at; the juror the law. And for this reason arbitrators were discovered, how *epieikes* is strong.)

Here are the four translations of this passage. Notice how they are different from each other and how, while making Aristotle easier to understand, they change him.

Cambridge: It is equitable to excuse human failings. Also to consider the legislator and his meaning rather than law and its letter; the moral purpose, rather than the action; the whole rather than the part; the past character invariable or usual of a man rather than his character at this moment. It is equitable to remember benefits rather than injuries, and benefits received rather than benefits done. It is equitable to be patient under wrong; to be willing that a judicial sentence should be nominal

²⁴² I xiii. 17-19, 1374b 10-23

rather than real; – to desire an appeal to arbitration rather than to a law court, – for the arbitrator looks to equity, the jury man to justice, – the arbitrator having been invented expressly to enforce the claims of equity.

Loeb: And it is equitable to pardon human weaknesses, and to look not to the law but to the legislator; not to the letter of the law but to the intention of the legislator; not to the action itself, but to the moral purpose; not to the part, but the whole; not to what a man is now, but to what he has been, always or generally; to remember good rather than ill treatment, and benefits received rather than those conferred; to bear injury with patience; to be willing to appeal to the judgment of reason rather than to violence; to prefer arbitration to the law court, for the arbitrator keeps equity in view, whereas the dicast looks only to the law, and the reasons why arbitrators were appointed was that equity might prevail.

Oxford: And to be forgiving of human weaknesses is fair. And [it is also fair] to look not to the law but to the legislator and not to the word but to the intent of the legislator, and not to the action but to the deliberate purpose and not to the part but to the whole, not [looking at] what a person is now but what he has been always or for the most part. And [it is fair] to remember the good things one has experienced [because of him] rather than the bad, and good things [because of him] rather than done for him. And [it is fair] to bear up when wronged. And [it is fair] to wish for an issue to be decided by word rather than by deed. And [it is fair] to want to go to arbitration rather than to court; for the arbitrator sees what is fair, but the jury looks to the law and for this reason arbitrators have been invented, that fairness may prevail.

Penguin: It is also equitable to forgive human failings.

And also to have regard not to the law but to the lawgiver and to look not at the words but at the intention of the lawgiver, and not to the action but to the purpose, and not to the part but the whole, and not to how someone now is but how he has always been or for the most part.

Also the recollection rather of good than bad treatment and of the good treatment that one has received rather than of the good deeds one has done. And enduring being wronged.

And to wish judgment to be given rather by word than by deed, and to be willing to go to arbitration rather than to trial. For the arbitrator sees equity, the juror the law; indeed that is why an arbitrator is found – that equity might prevail.

The hardest part of this passage is *kai to mallon logô ethelein krinesthai ê ergô*.²⁴³ “And rather by word should want to judge than by deed.” The Cambridge translation is quite daring: “to be willing that a judicial sentence should be nominal rather than real.” The Loeb translation notes the Cambridge translation but does not adopt it. It has “to be willing to appeal to the judgment of reason rather than to violence.” The Oxford translation sticks to the Greek “And [it is fair] to wish for an issue to be decided by word rather than by deed,” as does the Penguin translation, “And to wish judgment to be given rather by word than by deed.” I am struck by the fact that with four translations and my own retranslation, I still do not understand what Aristotle says.

²⁴³ I xiii. 18, 1374b 19

Chapter IV

Retranslating what Aristotle says about law in *Ethics*

A. Overview of *Ethics*

In *Rhetoric*, where Aristotle looks at how the word “law” and the words around it are used in speeches before either the courts or the assembly, his comments are short and dense. In *Politics*, when Aristotle talks about law in the course of talking about the *polis*, his comments are scattered and not organized. We will look at them in Chapter V. Aristotle’s most organized and extended comments about law are in Books V and III of the *Nicomachean Ethics*.

In *The Movement of Animals*, Aristotle talks about how animals move. In *Ethics*, he talks about how humans evaluate their actions. In *Ethics* III, he looks at what people say when they praise or blame someone for doing something. Mostly, as far as law is concerned, this means blaming. Law is rarely used to praise people.²⁴⁴ If you are “blamed” for a crime, you are found “guilty.” If you are blamed for a tort, you are found “liable.” *Ethics* III is about the judgments “guilty” and “liable.” *Ethics* V is about what happens – in a *polis* where the law is just – to someone who is found legally guilty or liable. It is important to bear in mind, that in *Ethics*, Aristotle is not interested in what happens under unjust law. He says some things about this in *Politics* and we will look at them in Chapter V, but in *Ethics*, Aristotle talks solely about “law” in connection with “justice.”

Ethics V applies directly to the modern “quantum of damages” and obliquely to “punishment.”²⁴⁵ *Ethics* V also talks about the use of money to buy and sell things. Obviously this is important to law, but Aristotle does not say the use of money is just; he says it is convenient.

In *Ethics* III, Aristotle lays out, in some detail, an integrated string of contrarities that leads to the legal verdict: “guilty” or “liable.” The first contrariness is

²⁴⁴ On the other hand, there is praise in law. It takes the form of offices and property. We will look at this later in this chapter.

²⁴⁵ Aristotle also mentions contract, but he has almost nothing to say about it, presumably on the ground that it is too obvious.

with-will

without-will

ἑκων *hekôn* *heck own'*ἀκων *akôn* *ah cone'*

voluntary

involuntary.

Praise and blame, Aristotle says, only come for what is *hekôn*; what is *akôn*, does not bring praise or blame; it brings understanding and sometimes pity.²⁴⁶ The second contrariety Aristotle mentions is

force

not-knowing

βία *bia* *bee' ah*ἄγνοιαν *agnoian* *gr'og' an'noy on*

compulsion

ignorance.

An action is *akôn* and so does not attract praise or blame if it is *bia* or *agnoian*, compelled or done without knowledge.

One striking thing about these contraries is how close they are to the ones used in modern law. Aristotle lived at a different time and place and under different laws, but he says that in determining guilt or liability people consider the same things we do. We too distinguish between voluntary and involuntary acts and we too take compulsion and lack of knowledge to make something involuntary. That Aristotle's contraries resemble our own suggests that perhaps there is something "natural" or inevitable about law. Perhaps, given the way people are, law must draw or at least is very likely to draw certain distinctions.²⁴⁷

We will look, in more detail, at what Aristotle says about law in *Ethics* III, but first it should be noted that *Ethics* V is the best known of Aristotle's comments on law. It is highly organized and striking, particularly because it contains such a large amount of mathematics. Some of the mathematics has to do with the just distribution of things in a *polis*; some has to do with straightening out injustices between the people in the *polis*; some has to do with the use of money. That money can be discussed mathematically is not surprising; that justice can be discussed mathematically suggests, once again, that there may be something "natural,"

²⁴⁶ III. i, 1109b. 32.

²⁴⁷ S. Rolland points out that Hebrew law does not work in terms of these same distinctions, so perhaps they are not natural.

almost inevitable, about law. In *Ethics V*, Aristotle speaks about the relationship between nature and law and we will examine what he says. It will not answer any of our questions.

*

Ethics V is couched in terms of δικαιοσύνη (*dee kay^{ak} oh sue' nay*). This is usually translated “justice” but there is a problem with this translation. The root *dik*, the first three letters in *dikaiosynê*, occurs in many different words all of which have to do with justice and one of them, *δίκαιον* (*dee' kay^{ak} on*), must be translated as “justice.” It is the word Aristotle uses when he distinguishes between “distributing justice” and “straightening justice.”

Ethics V is a catalogue of the *dik* and *adik* words, the words that mean justice and injustice. One of the major things Aristotle does in *Ethics V* is distinguish very carefully between the different *dik* words. He goes so far, for instance, as to note that there is a difference between *dikaia prattein*, “justice to practice” and *dikaiopragein*, “to justice-practice.”²⁴⁸ Given Aristotle’s concern to differentiate between the different *dik* words, it seems as though we have to make a difference between *dikaion* and *dikaiosynê*. Since *dikaion* must be translated “justice,” *dikaiosynê* must be translated in some other way.

Dikaion is used more than *dikaiosynê* in *Ethics V*, but *dikaiosynê* is the more central word. It is the word from which Aristotle starts and it comes from Aristotle’s major concern in *Ethics*: how the word *aretê* is used. *aretê* is usually translated “virtue.” This translation has the vice of being Latin. *aretê* comes from the name of the Greek God Ares. It starts out in Greek meaning the “goodness” or “excellence” that a warrior exhibits. In the *Iliad*, Homer speaks of the *aretê* of Achilles and the other heroes, but 400 years later, the Greek language had evolved so far that in *Politics*, Aristotle can say women have an *aretê* and slaves do, too.²⁴⁹

Ethics is about moral discourse. It is about how people use the words “good,” “virtuous,” “brave,” “temperate,” “just,” etc. In *Ethics II*, Aristotle says the key to being called “good” – by yourself and others – is ἕξις (*heck'*

²⁴⁸ V viii, 1135b 5.

²⁴⁹ *Politics*, I. v, 1260a 41 slaves, 1260b 9-10 women and children.

sis),²⁵⁰ “attitude,” “disposition” or “habit.” A person who is called “good” has the ἔξις of being good. He wants good things to happen and acts to make good things happen. Since ἔξις is related to the word “to have,” we might say a person who is called “good” has an infusion of what is called “goodness.”

δικαιοσύνη is a ἔξις, an infusion or habit of justice. I retranslate it as “justness.” A person who has the habit of justness wants just things to happen and tries to make just things happen. A person who strives for justice, *dikaion*, has justness, *dikaiosynê*.

In the Loeb translation a capital J more or less marks the difference between *dikaiosynê* and *dikaion*. I say “more or less” because the pattern is not consistent,²⁵¹ but on the whole I think we can treat “Justice” as translating *dikaiosynê* and “justice” as translating *dikaion*.

A footnote is added to the first use of *dikaiosynê* that begins

In what follows δικαιοσύνη is found to possess both the wider meaning of Righteousness in general, covering all right conduct in relation to others, and the narrower sense of virtue of right conduct in relation to others where gain or loss (whether to the agent or the other parties) is involved. δικαιοσύνη in this narrower sense is the special Moral Virtue which is the subject of Book V²⁵²

Why do “Righteousness” and “Moral Virtue” take capitals? We will see the answer to this question in a moment, but first let us notice a second, even more important wrinkle in what Aristotle says about *dikaiosynê*. He uses the plural of this word. He speaks of δικαιοσύναι (*dee kay^{ak} oh sue’ nigh*).²⁵³ He does this once and only once, when he says,

²⁵⁰ II. vi, 1106a 12 ff.

²⁵¹ For instance, at 1134b 15-16, *dikaiosynê* does not appear, but the Loeb translation has:

Hence Justice exists in a fuller degree between husband and wife than between father and children, or master and slaves; in fact, justice between husband and wife is Domestic Justice in the real sense, though this too is different from Political Justice.

H. Rackham, *Aristotle, Nicomachean Ethics* (Harvard, 1926, 1999), p. 295.

“Justice” and “justice” are both used to translate *dikaion*.

²⁵² H. Rackham, *Aristotle, Nicomachean Ethics* (Harvard, 1926, 1999) p. 252.

²⁵³ V. ii, 1130b 6-7

that there are justnesses many ... is clear
oti men oun *dikaiosynai* *pleious* ... *dêlon*

In proper English syntax this is:

That there are many justices is clear.

This is one of the most striking things Aristotle says, but the translations do not allow him to say it. The Loeb translation presents the quoted passage this way:

Thus it is clear that there are more kinds of Justice than one ...

The Oxford translation presents it this way:

It is clear, then, that there is more than one kind of justice²⁵⁴

The Penguin translation has:

We may now take it as proved that there is more than one kind of justice ...²⁵⁵

According to all three translations, there can be more than one “*kind* of justice” but there cannot be many “justices,” at least not in a moral sense. The translators are reflecting the fact that the plural English word “justices” can only be used to refer to the judges of a superior court. In English, justice, in a moral sense, is a singular thing. The English language says that justice can come in different kinds, but is itself singular.²⁵⁶

The Greek language said precisely the same thing.²⁵⁷ Aristotle breaks with the conventions of the Greek language when he uses *dikaiosynai*. He

²⁵⁴ D. Ross, *Aristotle, The Nicomachean Ethics* (Oxford, 1925, 1998) Revised by J.L. Ackrill and J.O. Urmson.

²⁵⁵ J.A.K. Thomson, *The Ethics of Aristotle*, (Penguin, 1953)

²⁵⁶ What we think is singular is very interesting and needs more study. I think it would be awkward to speak of “gladnesses,” but there is nothing the least bit awkward about speaking of “sadnesses.”

²⁵⁷ Many, if not most languages may say justice is a singular thing. After all, Plato was not a fool. His idea of Ideas expresses something very deep in people. We think there is a single thing called “justice.” Indeed, we may even think there is a single Thing called “Justice.” We know what is “Just” before we have ever seen examples of it.

uses it once and only once. It stands out like a red flag. Aristotle is reminding himself of something that is too easy to forget: justice is not a single thing. There are many justices.

Why do the translations refuse this obvious translation. The answer is in the Loeb translation's use of the capital J. The capital J in "Justice" is platonic. When capitals are added to "Righteousness" and "Moral Virtue" Aristotle is being translated in a platonic way. The inclination to do this can be seen in the work of many scholars. One, for instance, introduces his comments on Aristotle's discussion of justice in *Ethics V* with these words:

Of Plato's cardinal virtues, justice and wisdom remain for treatment. To justice Book V. is devoted.²⁵⁸

This scholar does not think Aristotle says the same thing about the virtues that Plato does. According to him, the method adopted by Aristotle is

the very reverse of that followed by Plato. Plato (in the *Republic*) takes the four cardinal virtues recognized in his day – wisdom, courage, self-control, justice, – and interprets them so widely that each is in danger of overlapping the others, and two of them – wisdom and justice – tend to be almost identified with virtue as a whole. In Aristotle the spheres of the several virtues are strictly narrowed down²⁵⁹

Aristotle distinguishes one virtue from another but the tendency to unify and singularize is part of Plato's idealism. Aristotle does not "narrow down" the many justices into one justice, let alone one Justice. Aristotle does not say there are different *kinds* of justice. He says there are different *justices*.

In the modern English translations, *Ethics* is being platonized. This platonization is only the latest expression of a tradition that goes all the way back to ancient Rome, where Aristotle and Plato were seen as harmonious and forced to be harmonious even though they were not. Another form this platonization takes can be seen in a comment in the Loeb translation.

²⁵⁸ W.D. Ross, *Aristotle*, (Methuen, 1923, 5th ed. 1949) p. 209.

²⁵⁹ W.D. Ross, *Aristotle*, (Methuen, 1923, 5th ed. 1949) p. 202.

The salient points and main conclusions of his argument – the formal definition of Happiness, the quasi-mathematical analysis of moral virtue as an observance of the Mean, the identification of that highest activity in which Happiness by definition consists with the exercise of pure thought – are undoubtedly put forward as truths of absolute validity.²⁶⁰

The idea that, in *Ethics*, Aristotle thinks he is revealing “truths” is pervasive in the scholarship. One scholar says that in *Ethics* “the general opinions on moral questions which represent the collective wisdom of the race”

are examined, compared with one another, purged of their inaccuracies and inconsistencies, and found to yield truths more intelligible in themselves, by no means obvious at first sight but self evident when once you have reached them.²⁶¹

In a footnote to this comment, this scholar refers to 1145b 2-8.²⁶² Here is his translation of that passage in the Oxford edition. I have highlighted one word and will return to it.

We must in all other cases, set the apparent facts before us and, after discussing the difficulties, go on to prove, if possible, the *truth* of all the common opinions about these affections of the mind or failing this, of the greater number and the most authoritative; for if we both resolve the difficulties and leave the common opinions undisturbed, we shall have proven the cases sufficiently.

The Greek word for “true,” ἀληθής (*ah lay th^{EME}ace'*), does not occur in this passage. This scholar has read it into the words *deiknunai malista*, “show (or prove) especially.” Here is the Greek, retranslated word for word:

it must	as	with the others	put the phainomena
<i>dei d'</i>		<i>hōsper epi tōn allōn,</i>	<i>tithentas ta phainomena</i>

²⁶⁰ H. Rackham, *Aristotle, Nicomachean Ethics* (Harvard, 1926, 1999) p. xxv.

²⁶¹ W.D. Ross, *Aristotle*, (Methuen, 1923, 5th ed. 1949) p. 189.

²⁶² VII. I.

and first going through the problem to show especially
kai prôton diaporêsantas houtô deiknynai malista

on the one hand all the in-seemings about what happens
men panta ta endoxa peri tauta ta pathê

if on the other hand not the most and most ruling
ei de mê ta pleista kai kyripôtata

if released the discomforts and over-left
ean gar lyêtai te ta dyuscherê kai kataleipêtai

the opinions demonstrated would it be
ta endoxa dedeigmenon an eiê

sufficiently
hikanôs

The Oxford translation is not the only one that puts the word “truth” in this passage. The Loeb translation is a little different, but it too includes the word “true.” Notice that the two translations have the word “true” in different places and referring to different things. This is because it is not in the Greek text.

Our proper course with this subject as with others will be to present the various views about it, and then, after reviewing the difficulties they involve, finally to establish if possible, all, or if not all the greater part and most important of the opinions generally held with respect to these states of mind; since if the discrepancies can be solved, and a residuum of current opinion left standing, the *true* view will have been sufficiently established.

The Penguin translation uses the “truth” twice in this passage.

The *true* method for us to follow, here and elsewhere is to set forth the views which are held on the subject and then, after discussing the problems involved in these, to indicate what *truth* lies in all or – if that proves impossible – in the greatest

number and importance of the beliefs generally entertained about these states of mind. I am convinced that, if the difficulties can be resolved and we are left with certain of these beliefs – those, namely, which have stood our test – we shall have reached as satisfactory a conclusion as is possible in cases of the kind.

This is not the only place where the word “truth” has been added in the translations of *Ethics*. The Loeb translation contains “truth” where the Oxford does not and the Oxford translation contains it where the Loeb does not. At 1103b 3, Aristotle says

it witnesses what becomes in *polisses*
marturei de kai to ginomenon en tais polesin.

The Loeb translation has, “This truth is attested by the experience of states.” The Oxford translation has, “This is confirmed by what happens in states.” Later in the paragraph (1103b 9), Aristotle says

the same for the upon-heart
homoiôs de kai ta peri tas epithumias

The Oxford translation has, “The same is true of appetites.” The Loeb translation has “The same holds good of our dispositions with regard to the appetites.”

The modern English translations platonize *Ethics* by sprinkling in the word “truth.”²⁶³ This word adds philosophical weight to what Aristotle says. Adding weight is part of a more general inflation that has taken place and is still taking place with *Ethics*. This inflation can also take the form of adding words with no philosophical significance. At 1134b 8 (V vi.), Aristotle says, in the Loeb translation:

²⁶³ It should also be noted that sometimes even when the word *alêtheia* does appear, it is not translated “truth.” It appears for instance, at V. v, 1133b 19, where Ross translates, “Now in truth it is impossible that things differing so much should become commensurate,” but Rackham has “Though therefore it is impossible for things so different to become commensurable in the strict sense.” *Alêtheia* also appears at V. v, 1133a 28, which Ross translates as “this unit is in truth demand.” Rackham has “this standard is in reality demand.”

Justice between master and slave and between father and child is not the same as absolute and political justice, but only analogous to them. For there is no such thing as injustice in the absolute sense towards what is one's own; and a chattel or a child till it reaches a certain age and becomes independent is, as it were, a part of one's self, and no one chooses to harm himself; hence there can be no injustice towards them, and there is nothing just or unjust in the political sense. For these, *as we saw*, are embodied in law, and exist between persons whose relations are naturally regulated by law, that is persons who share equally in ruling and being ruled. Hence Justice exists in a fuller degree between husband and wife than between father and children, or master and slaves; in fact, Justice between husband and wife is Domestic Justice in the real sense, though this too is different from Political Justice.

Ethics is the most organized of Aristotle's works. The phrase "as we saw" has been added to make it look even more organized than it is. Here, translated literally, is the Greek that the Loeb translates as

For these, *as we saw*, are embodied in law, and exist between persons whose relations are naturally regulated by law, that is persons who share equally in ruling and being ruled.

according to law it was and in those it naturally-grows
kata nomon gar ên, kai en hois epephykei

to be law those who were to whom it extends equality
einai nomos houtoi d' êsan hois huparchei isotês tou

to rule and to be ruled
archein kai archesthai

The phrase "as we saw" is not in the Greek but the Loeb translation is not the only one to include it. Here is the Penguin translation of the same Greek:

For political justice and injustice are, *as we saw*, defined by the law and in communities where the rule of law is naturally

accepted, namely those whose members rule and are ruled on terms of equality.

“As we saw” is being used in both translations to convey the meaning of the Greek word γάρ, *gar*. This word marks some kind of reference back, which has been translated, “as we saw.” The word *gar* occurs thousands of times in Aristotle and it is usually left completely untranslated. When *gar* is translated, it is usually as “because” and though *gar* occurs only once in the passage, the Oxford translation contains the phrase “as we saw” twice.

for it was *as we saw* according to law, and between people naturally subject to law, and these *as we saw* are people who have an equal share in ruling.

Many will find it hard to accept that the translations are changing what Aristotle says, but immediately before “as we saw,” the Loeb translation has the phrase “there is nothing just or unjust in the political sense ...” The Penguin translation has the phrase “For political justice and injustice are ...” and the Oxford translation has the phrase “the justice or injustice of citizens is not manifested in these relations.” The Greek is

neither injustice nor justice the political ...
*oud' ara adikon oude dikaion to politikon ...*²⁶⁴

All three translations reverse what Aristotle says. Aristotle speaks of “injustice and justice.” All three translations use “justice and injustice.” Why? I suspect it’s because “justice and injustice” somehow sounds better in English than “injustice and justice.” Making what Aristotle says sound better in English is another way to inflate *Ethics*.

All of Aristotle’s works are made to sound better in translation but this has happened more to *Ethics* than to any other work. The Greek in *Ethics* is different from the Greek in Aristotle’s other works. It is less cryptic. And the content is different. *Ethics* is more organized and more assertive than any of Aristotle’s other works. Scholars agree that *Ethics* is different from Aristotle’s other works. *Ethics* seems almost to have been written for publication. None of Aristotle’s other works do. Most scholars

²⁶⁴ V. vii, 1134b13

still say *Ethics* is lecture notes,²⁶⁵ though perhaps for a larger audience. Many think *Ethics* is Aristotle's finest work. Thus, one scholar says,

[a]mong all the relics of Greek antiquity, Aristotle's *Ethics* is one of those that maintain their interest most freshly.²⁶⁶

This scholar is not speaking about the works of Aristotle here; he is speaking about the one book, *Ethics*. He thinks *Ethics* is better than Aristotle's other works and so does the leading modern commentator on *Ethics*. He is actually disrespectful of *Politics* because, according to him, it does not live up to *Ethics*.

[T]he *Politics*, as we have it, does not exactly carry out the plan which Aristotle sketched for it at the end of the *Ethics*...²⁶⁷

“As we have it”? Is this scholar suggesting that the text of *Politics* has somehow been corrupted? I have not heard that suggestion made anywhere else and in so far as any text deserves “as we have it,” it is *Ethics*, not *Politics*. *Politics* is like Aristotle's other works. *Ethics* is the one that stands out as different. It employs Aristotle's usual method of looking at things (in this case our moral discourse) and stating the obvious (“goodness” is the habit of being “good” and wanting “good” things) but unlike the rest of Aristotle's works, which jump around, touch on things lightly and leave you wondering, in *Ethics*, everything is covered in too much detail. For instance, Aristotle says that when we speak of someone as “an unjust person,” one of the things we mean is that he is a *πλεονέκτης* (*play awe neck' tess*), “an extra-taker.” *Ethics* goes on to explain that an unjust person does not take extra of everything. The unjust person only takes extra of what is good; of what is bad, the unjust person takes less.²⁶⁸

This is not a silly observation. Indeed, it is quite perceptive. But it does seem a bit like gilding the lily, as if someone had read the word *pleonektês* and said “Ah, but it's not always extra. Sometimes it's less.” In *Ethics*, someone has tried to fill in all the holes that are left unfilled in Aristotle's other works. I am prepared to admit that this may have been

²⁶⁵ In his *Ethics of Aristotle* (Methuen, 1900), J. Burnet says “we may be glad that Aristotle found it necessary to write down what he was going to say word for word.” p. xviii. This is not meant ironically.

²⁶⁶ H. Rackham, *Aristotle, Nicomachean Ethics* (Harvard, 1926, 1999) p. xxvii.

²⁶⁷ H.H. Joachim, *Aristotle, The Nicomachean Ethics, A Commentary* (Oxford, 1951) p. 17.

²⁶⁸ V. i, 1129b 1.

Aristotle himself. Maybe it was he who filled in what he saw as holes in his notes on the use of moral discourse. If so, I think he filled in too many holes. I am not alone in this. Other scholars find some parts of *Ethics* excessive. For instance, *Ethics* contains a considerable discussion about whether a person can be said to be “unjust” to himself. Aristotle says one of the most striking things about “justness” is that, among the things people call “good,” it alone is toward another, *pros heteron*. A brave person is brave *pros auton*, toward himself. A just person is just, *pros heteron*.

“Ah!” someone said, “can we speak of a person as ‘just’ to himself?” Like me, the leading modern scholar on *Ethics* finds this question *de trop*. About one step in Aristotle’s answer he says, “[t]his argument is very obscure”²⁶⁹ and he summarizes the whole of what Aristotle says about the question almost derisively:

1134a 4 - b 14 *Problem (iv)*. *Can a man act unjustly towards himself?* The answer is ‘No – except metaphorically.’

Obscure discussions about very small things occur everywhere in Aristotle’s works but there are more of them in *Ethics* than in other works and the ones in *Ethics* are longer. The tone of *Ethics* is completely different from the tone of the other works. *Ethics* is filled with what seem to be answers and is smug in a way none of Aristotle’s other work is. It alone fits the comment one scholar made about Aristotle adopting “a headmasters style” and speaking “with assurance as if on the matter in hand final truth has been achieved....”²⁷⁰

In Chapter II, I said that I disagreed with the downgrading of *Problemata* to pseudo-Aristotelian. The questions in *Problemata* are by Aristotle, the answers are not. I would say a similar thing about *Ethics*. There are things in *Ethics* that are by Aristotle and things that are not, and, just as the bulk of *Problemata* is not by Aristotle, so the bulk of *Ethics* is not by Aristotle. So different is *Ethics* from Aristotle’s other work, that for many years it was common for scholars to say the *Nicomachean Ethics* was written by Aristotle’s son, Nicomachus.²⁷¹

²⁶⁹ H.H. Joachim, *Aristotle, The Nicomachean Ethics, A Commentary* (Oxford, 1951) p. 162.

²⁷⁰ J.L. Ackrill, *Aristotle the Philosopher*, (Oxford, 1981) p. 2.

²⁷¹ J. Burnet, *Ethics of Aristotle* (Methuen, 1900), dismisses this view at p. xi- xiii.

Copyists and translators have been making additions to *Ethics* for a long time. They do this in order to make what they take to be Aristotle's meaning clearer. *Ethics* is not alone in this. All of Aristotle's works have had additions. Speaking generally of Aristotle's works, one scholar says

There are passages where marginal notes or additions whether by Aristotle or by his successors appear to have been incorporated into the text.²⁷²

The additions that have been made to the other works have left their form unchanged. Everywhere else, Aristotle's notes have remained notes. In *Ethics*, the form is different. The medium has been changed. The Greek in *Ethics* is different, even to an untrained eye, and the tone is different. Everywhere else in his writings Aristotle is full of doubts and second thoughts. This persists in parts of *Ethics*,²⁷³ but at some points, *Ethics* actually becomes quite preachy. For instance, in the Oxford translation Aristotle says, "Now in everything the pleasant or pleasure is most to be guarded against."²⁷⁴

This despising of pleasure, this making pleasure into an evil thing, could form the basis of the worst imaginable sermon; it has nothing to do with Aristotle. Elsewhere in his work, in fact, elsewhere in *Ethics* itself, Aristotle says ἡδονή (*hay don 'ay'*), pleasure, is a big part of being good.²⁷⁵ Because Aristotle contradicts himself so much, one cannot argue that this contradiction indicates that there must have been an addition, but I see the passage as "inflated." Some early Christian or Stoic made Aristotle assert that we must shy away from pleasure because that is what he thought Aristotle must have meant.

Aristotle says people who are called "good" avoid excesses and, because pleasure is attractive, it leads easily to excess. Saying we have to avoid pleasure is preachy and more important, it does not deal with ethical

²⁷² *Aristotle's Politics*, (Oxford, Barker, 1946, revised Stalley, 1995) p. xxxiii.

²⁷³ J. Burnet, *Ethics of Aristotle* (Methuen, 1900), takes Aristotle to be setting out a "doctrine" in *Ethics* and says

the foundations of the doctrine here set forth were of the most shifting character, taken as they are at one time from the opinions of ordinary people, at another time from popular Platonism. p. v-vi

I think the platonism was added later and is still being added.

²⁷⁴ II. ix, 1109b 7-8

²⁷⁵ VII. vii, 1150a 7, VII. xiii, 1153b 4, VII. xiv, 1154a 17, 1154b 26, X. i, 1172a 22 ff.

problems. It suggests that the middle, which according to Aristotle is where “goodness” lies, comes between pleasure and pain. Aristotle says the middle is between two extremes, both of which are pleasant. *Ethics* is lopsided in a way none of Aristotle’s other works is. At one point, for instance, law is described as treating people like animals²⁷⁶ and why is there no opposite of *εὐδαιμονία*? I can think of no other major word Aristotle uses without pointing to its contrary.

Ethics not only *feels* different from Aristotle’s other works, it explicitly *says* it is different. In *Ethics*, Aristotle purportedly says his purpose in this one book is different from his purpose in his other works. Everywhere else in his works, Aristotle tries to understand things for the sake of understanding them.²⁷⁷ At one point in *Ethics*, Aristotle says trying to understand things for their own sake is almost like being a god.²⁷⁸ But at 1103b 26,²⁷⁹ Aristotle is supposed to say that his purpose in *Ethics* is not just to understand, but so that *agathoi genômetha*, “good ones we should become.” The Oxford translation renders the passage as follows:

Since, then, the present inquiry does not aim at theoretical knowledge like the others (for we are inquiring not to know what virtue is, but in order to become good, since otherwise our inquiry would have been of no use), we must examine the nature of actions, namely how we ought to do them; for these determine also the nature of the states of character that are produced, as we have said.

I find this passage emotionally suspicious; it goes very strongly against the whole drift of Aristotle’s work.

Throughout his work, Aristotle is talking about how we use *logos* and the way we use *logos* has precious little to do with whether we are good or not. Even if we are bad, we will say we are “good.” Nevertheless, the proclamation in *Ethics* of an inclination to reform humanity has been accepted as a statement by Aristotle and on the strength of it (and several other passages like it²⁸⁰), a leading scholar says that in *Ethics* Aristotle’s

²⁷⁶ X.ix., 1180a 13. I do not retranslate the comments on law in *Ethics* X.ix.

²⁷⁷ He says this, for instance, in *Metaphysics*, I.ii, 982a 14-17.

²⁷⁸ X. vii, 1177b 30.

²⁷⁹ *Ethics* II. ii.

²⁸⁰ Two places where this idea appears are: I. iii., 1095a 10 and X. ix., 1179a 35.

“object is not to understand ... but to guide and improve life.”²⁸¹ “[M]erely to understand, apparently, even if possible is valueless”²⁸²

I do not believe that Aristotle’s purpose in *Ethics* was “to guide and improve life.” Think of what that would mean. Aristotle would have to have decided, when he was an old man – *Ethics* is surely the work of an old man²⁸³ – to change his whole approach to philosophy. He would have to have started to think that he knew the “Truth” and wanted to tell it to people.

This is not impossible. Old men often want to leave something behind them that is not “valueless” and perhaps *Ethics*, as we have it, is closer than I think it is to the way Aristotle wrote it. I prefer to think it is not. I admit this is just a preference, but if I am wrong, if in this one book, Aristotle decided to be practical rather than theoretical, we should notice how miserably he failed. On his own terms he had to fail. *Ethics* is not a practical book and, given what Aristotle himself says in *Ethics*, it could not be a practical book. As Aristotle recognizes, to get anything at all out of what is said in *Ethics* one already has to be a good person.

*ou gar an akouseie logou apoterontos oud’ an syneiê ho kata pathos zôn ton d’ houtôs echonta pôs hoion te metapeisai holôs t’ ou dokei logô hupeikein to pathos alla bia*²⁸⁴

Oxford: For he who lives as passion directs will not hear argument that dissuades him, nor understand it if he does; and how can we persuade one in such a state to change his ways? And in general passion seems not to yield to argument but to force.

According to Aristotle, most of what makes a person “good” has to happen in childhood. On its own terms, therefore, the most *Ethics* could do would be to fine-tune the goodness of a person who was already good. If Aristotle were trying to tell good people how to be better, he would have to offer answers to the hardest ethical questions, and this he does not do. All Aristotle does in *Ethics* is to analyze well-known moral truths. Thus, for instance, he says explicitly that the just way to distribute things between the

²⁸¹ H. H. Joachim, *Aristotle, The Nicomachean Ethics, A Commentary* (Oxford, 1951) p. 15.

²⁸² *Ibid.*

²⁸³ *Ethics* I.iii. actually goes so far as to say that this subject is not for young men.

²⁸⁴ X.ix., 1179b 21-27.

citizens of a *polis* has something to do with merit and that everyone knows this.

they same-say all according to merit some must to be
omologousi pantes kat' axian *tina dein einai*²⁸⁵

Because *Ethics* talks about what people call “good,” it often has a preachy tone which the translations stress. “Justice is about merit” can be made to sound insightful and deep, but *Ethics* is not about morality, it is about moral discourse. It does not advocate being good. It does not say we should “guard against the pleasant and the pleasurable.” It says that people who are called “good” – by themselves and others – allow for the attractiveness of pleasure.

The closest *Ethics* comes to advocating goodness is when it says that what everyone wants is *εὐδαιμονία*. As I have already indicated the ordinary translation of this word as “happiness” misses out the *εὐ* that is so prominent in what Aristotle says about it. Literally, *εὐδαιμονία* means “well-little-godded.” In *Ethics*, Aristotle says everyone wants to feel “well-little-godded.” Everyone wants to be a person who calls themselves “happy” and whom others call “happy.” He adds that many people, or perhaps the wise people say, the only ones who will be called “happy” are those who are also called “good.” This is an expression of the idea that Socrates enunciates in Plato’s dialogues. “No one wants to think they are bad.” As I pointed out earlier, this was the one thing Socrates, Plato and Aristotle agreed on.²⁸⁶ In fact, it is something ancient Greeks generally agreed on. So do we.

In *Ethics*, Aristotle notices that if people call themselves “bad,” they will not say they are “well-little-godded.” Saying that no one wants to call themselves “bad” can be taken as saying that people want to be good, but *Ethics* does not tell people *how* to be good. *Ethics* points out some very interesting things about what people call “goodness,” but these are obvious, like guard against excess pleasure because pleasure is so attractive. If we were going to become good, we would have to learn to recognize what is

²⁸⁵ V. iii, 1131a 25-6

²⁸⁶ In Book VII of *Ethics*, Aristotle talks about whether people can be knowingly bad. His comments are overly long and he winds up saying what he says everywhere: on the one hand one they can, on the other hand they cannot.

excessive and *Ethics* does not explain how to do this. Indeed, over and over again Aristotle says it is very hard to know about these things.²⁸⁷

If *Ethics* were intended to “guide and improve life” it would have to deal with the hard questions and it does not; it just notices that they are hard. Aristotle does anticipate one aspect of Bentham’s utilitarianism when he says goodness has to do with pleasures and pains.²⁸⁸ People become bad, Aristotle says, from pursuing or avoiding the pleasures and pains they should not, when they should not or how they should not.²⁸⁹ But *Ethics* does not tell us which pleasures and pains to pursue or avoid, or when or how. Aristotle identifies some of the things with which goodness is concerned – bravery and temperance, for instance – and he says, people who are called “good” in these areas, by themselves and others, choose a middle rather than an extreme. They are neither too brave, nor too scared; neither too wild nor too mild.

This is the “philosophy” of Goldilocks, who wanted her porridge not too hot and not too cold, and her bed, not too hard and not too soft. One scholar inflates it when he says Aristotle gives a “quasi-mathematical analysis of moral virtue as an observance of the Mean.”²⁹⁰ In *Ethics*, Aristotle is supposed to assert that there is a formula which enables one to calculate goodness,²⁹¹ but Aristotle says it is hard to compare “goods.” People value different things differently and Aristotle does not say what we should value. Because the “quasi-mathematical” formula he gives assumes the values, it winds up being trivial. If you set one side equal to 2, *Ethics* says, and the other side equal to 10, the middle will be 6.²⁹²

This is not ethics. It is mathematics and it cannot “guide or improve life.” Once we know that one side is 10 and the other is 2, we know that the middle is 6, but the hard ethical thing is to set the value of the valuables, the goodness of the goods. This is something Aristotle does not tell us how to do and in any case, he proceeds immediately to unravel his “quasi-

²⁸⁷ At V. i, 1130a 9, Aristotle says of doing good for someone else: *touto gar ergon xalepon*. “This is work hard”. At IX. ii, 1164b 28, he asks whether one should show a preference to one’s father or to a good man or a friend and says *ou radion*, “it’s not easy” to distinguish *akribôs* “accurately” in these matters, “because there are many differences big and small in all of this and in goodness and necessity.”

²⁸⁸ II.iii., 1104b 13-17, 1105a 5.

²⁸⁹ II.iii., 1104b 21-23.

²⁹⁰ Rackham, *Aristotle, Ethics* (Harvard, 1926) p. xxv.

²⁹¹ *Ethics* V, as I have said, supposedly contains two formulas for calculating “justice.”

²⁹² II.vi, 1106a 35.

mathematical” formula by saying 6 is the middle on the one hand, but on the other hand there are other middles. If 10 pounds is too much for a person to eat and 2 pounds too little, a trainer would not necessarily set the right amount to eat at 6 pounds. It would depend on the person for whom he was setting the middle.²⁹³

To determine what is good, one has to evaluate both goods and people. What is good for each person depends on who they are. Later, Aristotle applies this to justice, which he says involves comparing two people. In the hardest cases, one must compare oneself with another, *pros heteron*. In easier cases, one compares *heteros pros heteron*. “Justness” means being in the habit of not overvaluing or undervaluing either yourself or others.

Ethics works at far too abstract and general a level to make people *agathoi*. It is not a moral cookbook. It cannot “guide and improve life.” *Ethics* makes explicit what everyone already knows about goodness, what our language, our *logos*, already says. One can find plenty of moral “advice” in *Ethics*. Aristotle’s descriptions of how people use the words “goodness” and “justness” often have the form of platitudes,²⁹⁴ especially in translation. But Aristotle does not tell us with any precision how to be either good or just. Indeed, he says explicitly that ethics is not an area in which one can expect precision.²⁹⁵

Aristotle says everyone does everything they do because they think it is “good.”²⁹⁶ He then notes that people call different things “good.” From there, he goes on to make one of the most important comments in *Ethics* about law and justice. He says it is impossible to measure what one person calls “good” against what another person calls “good” and notes that, as a practical matter, money is used to fill this gap. Aristotle does not advocate the use of money to measure justice. He does not suggest that measuring justice with money “improves life.” He merely reports that people do actually use money to measure value. Actually, he goes further and points to the pun between the two Greek words νόμος, law, and νόμισμα, money.

²⁹³ II.vi, 1106b 8.

²⁹⁴ Aristotle notes this himself at I.vii. 1097b 23. Ross: “to say that happiness is the chief good seems a platitude”; Rackham: “To say that the Supreme Good is happiness will probably appear a truism.” The word Aristotle uses is *homologoumenon* same-saying.

²⁹⁵ I. iii. 1094b 14-27

²⁹⁶ I. i, 1094a 1.

This pun about “law” and “money” being the same thing is a centrally interesting comment about law, but it does nothing to “guide and improve life.”

That there have been additions to *Ethics* is not in dispute. Early in *Ethics* V,²⁹⁷ the Loeb edition excises a whole string of words from the Greek text, presumably on the ground that they were added by someone other than Aristotle. These words are not bracketed, they are simply omitted. This is very unusual and at 1133b 2, the Loeb edition actually brackets the Greek word *ou*, “not,” presumably on the ground that it was put in by someone other than Aristotle. Notice what this means. Scholars think that in an effort to make Aristotle’s meaning clearer, someone actually *reversed* his meaning and notice also that this reversal must have lasted for a while or it would not have made it into the brackets.

I think a great deal has been added to *Ethics*. The only difference between my position and that of other scholars is that I think a great deal more has been added to *Ethics* than others do. I think very early on, in either Greece or Rome, some unknown disciple “improved” Aristotle’s notes about goodness with an eye toward publishing them. I admit that it might have been Aristotle himself who did this, but I prefer to think it was an enthusiastic follower, someone who thought Aristotle knew everything. Ever since the first “improved” version of *Ethics* appeared, scholars have been subtly “improving” it further. They have done this and continue to do it on the conjoined assumptions that an author who writes a book about goodness for publication must think it contains the “truth” and that a book about goodness that has lasted for more than 2,000 years cannot be over-inflated.

B. *Ethics*, Book III

Aristotle says some very interesting things in *Ethics*. They are quite simple and full of contrariness. In *Ethics* III, for instance, Aristotle says that as far as virtue is concerned, what happens to someone and what is done bring praise and blame if they are *hekousia*, with-will.²⁹⁸ If they are *akousia*, without-will, they do not bring praise or blame; they bring understanding,

²⁹⁷ V. i, 1129b 10.

²⁹⁸ III. i, 1109 b 30.

literally “together-knowing,” *συγγνώμης* (*cig^{ar} know’ mace*), and sometimes pity. So, he says, it’s necessary to draw a line dividing what is *hekousia* from what is *akousia*. Law makers use this line to assign honours and punishments.

I will return to Aristotle’s distinction in a moment, but first I turn to a point of translation. I have translated *πάθη* and *πράξεις* (*pa’ they* and *prac^{tical} say-ss*), as “what happens to someone and what is done.” *Pathê* is one of the 1+9 uses of “is” that Aristotle notes in *Categories*. He says an *ousia* can be said to do things, for instance, cut or burn and an *ousia* can be said to have things done to it, for instance, be cut or be burnt.²⁹⁹ *Pathê* is to be changed by something external.

When *pathê* and *praxeis* are used later in *Ethics* V³⁰⁰ (in the singular, *to pathos* and *hê praxis*), the Oxford translation has “the suffering and the action,” while The Loeb translation has “suffering and the doing.” “Suffering” is a little too negative; *πάθη* can be positive.

The Penguin translation avoids the negativity but inverts the two and has “the action and the consequence of the action.” I cannot understand this inversion nor can I understand why none of the translations carries the translation of *pathê* as “suffering” back from *Ethics* V into *Ethics* III. At 1109b 30, The Oxford translation renders *pathê* and *praxeis* as “passions and actions,” while both the Loeb and Penguin translations render it as “feelings and actions.” Both “passions” and “feelings” miss Aristotle’s point. The *praxis*, what is done, is what is praised or blamed. The *pathos*, what happens to someone, determines whether the *praxis* draws praise or blame. If the *pathos* is pleasurable, the *praxis* draws praise. If the *pathos* is painful, the *praxis* draws blame.

Aristotle’s main point, of course, is that regardless of the *pathê*, *praxeis* only draw praise or blame if they are said to be *hekousia*. In our criminal law, this translates into “voluntary” and “with *mens rea*.” Just as voluntariness is presumed and *mens rea* is defeasible, so Aristotle’s comments on *hekousia* begin with *akousia*. He says

²⁹⁹ This is not *prakseis*. It is *poeien*.

³⁰⁰ V. iv, 1132a 9-10

It seems (*δοκεῖ doe 'kay'*) that *akousia* is by force (*bia*) or through not-knowing (*agnoian*) coming.³⁰¹

Bia has to do with violence. Like me, the Oxford translation renders this as “by force.” The Loeb translation has “under compulsion,” which I think misses something. Aristotle explains that *bia* means

that in which the beginning is outside, that being in which nothing is thrown in by the doer or the sufferer, like if the wind or men with power carry you somewhere.³⁰²

This seems very clear but Aristotle immediately shows the contrariness in it by noticing

as much as because of fear greater bad done or because of
hosa de dia phobon meizonôn kakôn prattetai ê dia

good some like if a tyrant for-arranged shameful something to do
kalon ti hôion ei tyrannos prostattoi aischron ti praxai

ruling whose parents and children and it was done
kyrios ôn goneôn kai teknôn, kai praxantos

on the one hand they might be safe not doing
men sôzointo me praxantos

on the other hand they might die
d' apothnêskoien

both-sides-they-stand it has whether against-will
amphisbêtêsin echei poteron akousia

it is or with-will
*estin ê hekousia*³⁰³

³⁰¹ III. i, 1109b 35-1110a 1.

³⁰² III. i, 1110a 2

³⁰³ III. i, 1110a 4-8.

Notice first, that Aristotle does not even suggest an answer to this disagreement (this both-sides-standing). Notice second, how much less cryptic this Greek is. A word-for-word translation is almost comprehensible, as can be seen in the Oxford translation, which is virtually word-for-word.

But with regard to things that are done from fear of greater evils or for some noble object (e.g. if a tyrant were to order one to do something base, having one's parents or children in his power, and if one did the action they were to be saved, but otherwise would be put to death), it may be debated whether such actions are involuntary or voluntary.

Aristotle says law makers will find the distinction between *hekousia* and *akousia* useful, but I cannot see how they could find it at all useful. The distinction is a contrariness and Aristotle notes that when things are thrown overboard in a storm that looks both *hekousia* and *akousia*.

Taken on its own on the one hand nobody throws things away with-will, but to save themselves on the other hand everybody with a mind would do it. *Miktai* (*mick tie'*), mixed, are these doings, though rightly more with-will, because they are chosen when they are done and the purpose of the doing is timely. So the with-will and against-will that are done we have to say are done with-will.³⁰⁴

In this short passage, Aristotle uses "doing" or "done" five times and does not mention *pathê* even once. He has put suffering aside (as he could not have put it aside if it were passions or feelings) and started to talk solely in terms of action. He says

these mixed actions are with-will because the origin of the movement of the part of the body is in the person who does the thing, and if the origin is in him, it's up to him to do it or not. So these mixed actions are with-will, though simply they are equally without-will.

³⁰⁴ III. i, 1110a 9-13. One mark of the difference between the Greek in *Ethics* and the Greek in Aristotle's other works is how understandable this word-for-word retranslation is.

Again, the distinction falls apart and Aristotle continues to notice its contrariness. So he says,

Sometimes with mixed actions people are praised for putting up with what is base or painful in exchange for something big and good. Then again they might be blamed because to put up with something base for no good or a small one is fouled up (*phaulon, foul' on*).

Sometimes praise on the one hand does not come, together-knowing on the other hand, that which because the doing is something which must not, which human nature overholds and no one would against-stand.³⁰⁵

Oxford: On some actions praise indeed is not bestowed, but pardon is, when one does a wrongful act under pressure which overstrains human nature and which no one could withstand.

Some on the other hand equally not it is to be necessitated, but rather we must die suffering the most terrible.

Loeb: Yet there seem to be some acts which a man cannot be compelled to do and rather than do them he ought to submit to the most terrible death.

The Loeb contains an inflating footnote after the word “do”.

i.e. some acts are so repulsive that a man's abhorrence of them must be stronger than any pressure that can be put on him to commit them; so that if he commits them he must be held to have chosen to do them.

Aristotle gives an example from drama. He says,

Euripides' Alcmaeon laughable it appears in being necessitated to mother-kill.³⁰⁶

The drama to which Aristotle refers is lost but the Loeb translation explains that Alcmaeon's mother was bribed to encourage her husband to join a war

³⁰⁵ III. i, 1110a 23- 26.

³⁰⁶ III. i, 1110a 28-29.

party and that Alcmaeon's father, foreseeing that he would die in this adventure, ordered his sons to avenge him by killing their mother and threatened them with famine and childlessness if they disobeyed.

Why Aristotle sees this compulsion as laughable is beyond me. It is not dissimilar from Orestes' compulsion to kill his mother, and no one takes that to be laughable. In any case, Aristotle jumps directly to one of the most obvious and hence, most insightful things he says in *Ethics*. The Oxford translation has it this way:

It is difficult sometimes to determine what should be chosen at what cost, and what should be endured in return for what gain, and yet more difficult to abide by our decision.

The Penguin translation has:

Yet it is not always easy to make up our minds what is our best course in choosing one of two alternatives – such and such an action instead of such and such another – or in facing one penalty instead of another. Still harder is it to stick to our decision when made.

The Loeb translation has:

But it is sometimes difficult to decide how far we ought to go in choosing to do a given act rather than suffer a given penalty, or in enduring a given penalty rather than commit a given action; and it is still more difficult to abide by our decision when made.

Here is the Greek, retranslated literally.

it is hard sometimes to judge what over-against what
esti de chalepon eniote diakrinai poion anti poiou

choose-must and what over-against what up-keep-must
hairiteon kai ti anti tinos hypomeneteon

still harder staying to knowledge-placing
*eti de chalepôteron emmeinai tois gnôstheisin*³⁰⁷

Aristotle goes back and asks “What should we say is forced?” In answer, he repeats the formula he has already given,

put simply, on the one hand it’s the cause is outside and the doer nothing in-throws.³⁰⁸

As we have seen, this is not simple, but Aristotle now adds another level of contrariness to it. Here is the Oxford translation of what comes next.

But the things that in themselves are involuntary, but now and in return for these gains are worthy of choice, and whose moving principle is in the agent, are in themselves involuntary, but now and in return for these gains voluntary.

Even this smooth translation is hard to understand. What it means, put simply, is that if you do something *anti* something else, on the one hand that is forced, on the other hand it is not forced. But, Aristotle goes on,

rather they are more likely with-will, because doing is by each, and this is with-will.³⁰⁹

The phrase *kath hekasta* (*kath he’ costa*), which I have translated “by each,” is very important for Aristotle. Things come by each. We do not see generalizations. We only see individual things and events.³¹⁰ When we generalize about whether “force” is used if something is done *anti* something else, it looks on the one hand like it is, and on the other hand like it isn’t, but if we look at the cases, we sort of see that in each case, the thing is *hekousia*.

This is a pale conclusion at best and Aristotle immediately unravels it, especially as it might “guide and improve life.”

what	over-against what	take-must	not easy	to out-give
<i>poia d’ anti</i>	<i>poiôn hairesion</i>		<i>ou rhadion apodounai</i>	

³⁰⁷ III. i, 1110a 29-32.

³⁰⁸ III. i, 1110b 2-4.

³⁰⁹ III. i, 1110b 7-8.

³¹⁰ *Metaphysics*, 1071a 20-21

many because differences are in the by-each
*pollai gar diaphorai eisin en tois kath hekasta*³¹¹

In Oxford translation,

What sort of things are to be chosen, and in return for what, it is not easy to state; for there are many differences in the particular cases.

How any of this could possibly be of use to those who make law is beyond me. Voluntariness and compulsion are important aspects of criminal guilt, as reasonableness is an important aspect of tort liability, but Aristotle expressly says that in particular cases – the subject matter of ethics and law – it is not easy to say what should be accepted *anti* what.

Aristotle concludes his remarks on *bia* by pointing out that if we say that what we do

for pleasure or because it's good is *bia*, then everything would be *bia*, because its for the sake of these things that everything is done.

It's laughable caused by outside but not by ourselves easily caught being by these, and of the on the one hand good ourselves, of the on the other hand shameful the pleasure.³¹²

Loeb: it is absurd to blame external things, instead of blaming ourselves for falling an easy prey to their attractions; or to take the credit of our noble deeds to ourselves, while putting the blame for our disgraceful ones upon the temptations of pleasure.

Finally, Aristotle says for the third time,

what is forced is what is outside from the beginning, nothing in-thrown by the one forced.³¹³

³¹¹ III. i, 1110b 8-9.

³¹² III. i, 1110b 10-16.

³¹³ III. i, 1110b 16-17.

Having dealt with *bia*, Aristotle turns next to *agnoian*, not-knowing. The first thing he says is that *agnoian* takes us past the contrariness of *hekousia* and *akousia* to yet another contrariness and requires yet another bit of *logos*. One contrary of *hekousia* is *akousia*, but there is another contrary of *hekousia*: *ouch hekousia*, not *hekousia*. *Ouch hekousia* is different from *akousia*.

That which is *agnoian* not *hekousia* on the one hand all is, *akousia* on the other hand the with-pain and being concerned. For *agnoian* doers are those not disturbed about the doing, *hekôn* not done, that no idea (*mê hêdei, may hay' day*), nor again *akôn* not pained. The through *agnoian*, the on the one hand being concerned *akôn* it seems, the on the other hand not being concerned, since it's other, is not *hekôn*, since it's different, better name having *idion*.³¹⁴

The idea that *ouch hekousia* is neither *akousia* nor *hekousia* is expressed first by the *men/de*, “on the one hand/on the other hand,” then by *epei heteros*, “since it's other,” and finally, by *epei gar diaphorei*, “since it's different.” This seems excessive and leads me to suspect that this passage has been “improved.” The desire to “improve” it can be seen in the Oxford translation.

Everything that is done by reason of ignorance is *not* voluntary; it is only what produces pain and regret that is *involuntary*. For the man who has done something owing to ignorance, and feels not the least vexation at his action, has not acted voluntarily, since he did not know what he was doing, nor yet involuntarily, since he is not pained. Of people, then, who act by reason of ignorance he who regrets is thought an involuntary agent, and the man who does not regret may, since he is different, be called a not voluntary agent; for since he differs from the other, it is better that he should have a name of his own. (italics in the original)

The Loeb translation “improves” the text even more than the Oxford translation does and the Loeb translation bolsters its “improvement” by

³¹⁴ III. i, 1110b 18-24.

referring back to a long footnote that appears when the word *hekousia* first appears at the beginning of *Ethics* III.

An act done through ignorance is in every case not voluntary,^a but it is involuntary only when it causes the agent pain and regret: since a man who has acted through ignorance and feels no compunction at all for what he has done, cannot indeed be said to have acted voluntarily, as he was not aware of his action, yet cannot be said to have acted involuntarily, as he was not sorry for it. Acts done through ignorance therefore fall into two classes: if the agent regrets the act, we think that he has acted involuntarily; if he does not regret it, to mark the distinction we may call him a ‘non-voluntary’ agent – for as the case is different it is better to give it a special name.

^a ἐκούσιον and ἀκούσιον are most conveniently rendered ‘voluntary’ and ‘involuntary’; but the word ἀκούσιον suggests ‘unwilling’ or ‘against the will,’ and to this meaning Aristotle limits it in s. 13. There he introduces a third term, οὐχ ἐκούσιον, ‘not voluntary’ or ‘not willing,’ to describe acts done in ignorance of their full circumstances and consequences, and so not willed in the full sense; but such acts when subsequently regretted by the agent are included in the class of ἀκούσια or unwilling acts, because had the agent not been in ignorance he would not have done them.

Aristotle’s point is interesting but it is inflated in the Greek and further inflated in the translations. No one can make our ideas about with-will, against-will and not-with-will clear.³¹⁵ That is why the phrase “what is forced is what is outside from the beginning, nothing in-thrown by the one forced” is repeated three times. Everyone can see the simple rule that Aristotle states, but no one, not even Aristotle, can explain exactly what it means. Aristotle is giving a rule of thumb, not a rule. Elsewhere in his work Aristotle understands this; in *Ethics*, he does not.

³¹⁵ L. Wittgenstein makes this point in the *Blue Book and Brown Books* (Harper, 1958) when he says, We are unable clearly to circumscribe the concepts we use; not because we don’t know their real definition, but because there is no real ‘definition’ to them. p. 25
... there are words of which one might say: they are used in a thousand different ways which gradually merge into one another. No wonder that we can’t tabulate strict rules for their use. p. 28

Aristotle next proceeds to take apart *agnoian*, “not-knowing.” He says

it is different to act because of *agnoian* than to do something *agnoian*. Drunken men and men in a rage it does not seem because of *agnoian* act, but *agnoian*.³¹⁶

Loeb: Acting *through* ignorance however seems to be different from acting *in* ignorance; for when a man is drunk or in a rage, his actions are not thought to be done through ignorance but owing to one or another of the conditions *in* ignorance.

Aristotle adds a summary remark on *agnoian* in general.

Not-knowing on the one hand all the wicked what they must do and what they should not do and from this missing-the-mark injustices and over all bad things come.³¹⁷

The Loeb translation is so impressed with the truth of Aristotle’s observation that it adds the word “true” to what Aristotle says.

Now it is true that all wicked men are ignorant of what they ought to do and refrain from doing, and that this error is the cause of injustice and vice in general.

This is more of the Socratic idea that people are bad because of ignorance. But Aristotle does not think, as Socrates did, that people are bad because they don’t know what is in their interest.

Said not if someone not-knowing together-going (*sympheronta*).³¹⁸

Oxford: but the term ‘involuntary’ tends to be used not if a man is ignorant of what is to his advantage.

Having commented generally on *agnoian*, Aristotle now lists the different things of which people can be said to be *agnoian*.

³¹⁶ III. i, 1110b 25-28.

³¹⁷ III. i, 1110b 27-30.

³¹⁸ III. i, 1110b 30-31.

what and what and about what or in what it acts
tis te dê kai ti kai peri ti ê en tini prattei

sometimes what like the tool and for the sake of what
eniote de kai tini hoion organô kai heneka tinos

like being safe and how like quiet or violent
*hoion sôtêrias kai pôs hoion hêrema ê sphodra*³¹⁹

Oxford: A man may be ignorant, then, of who he is, what he is doing, what or whom he is acting on, and sometimes also what (e.g. what instrument) he is doing it with, and to what end (e.g. he may think his act will conduce to someone's safety), and how he is doing it (e.g. whether gently or violently).

Aristotle says

All on the one hand of these no one would be not-knowing not mad, clearly on the other hand that not the doer, how himself?³²⁰

Oxford: Now of all of these no one could be ignorant unless he were mad, and evidently also he could not be ignorant of the agent; for how could he not know himself?

Aristotle gives a number of examples of people who don't know something. Among them are "thinking a son is an enemy, taking a sharp spear as dull or a stone as pumice."³²¹ He concludes that if one did not know about any of these things,

one would be said to have acted *akôn*, especially the most governing, most governing, which would seem to be what the act is and what it is for. So we can say that what is done *agnoian* can be said to be *akousia*, but it must be an act painful and after-concerned.³²²

³¹⁹ III. i, 1111a 4-6.

³²⁰ III. i, 1111a 7-8.

³²¹ III. i, 1111a 9-16.

³²² III. ii, 1111a 17-21.

Oxford: The ignorance may relate, then, to any of these things, and the man who was ignorant of any of these is thought to have acted involuntarily, and especially if he was ignorant on the most important points; and these are thought to be the circumstances of the action and its end. Further the doing of the act must be painful and involve regret.

This remark about people not being blamed when they are pained by what they have done and after-concerned about it is repeated several times. The usual translation of *metameleia*, *met ah mel A' ah*, is “regret” but *meleia* is “paying attention to” or “intending in the future” and I think *metameleia* is more forward-looking than “regret.” It is being concerned not to do the same thing again. This idea about being pained by what one has done and being after-concerned to not do it again is still relevant to law because these considerations occur in parole hearings. A prisoner who is not remorseful for a crime cannot be pardoned.

Our *logos* about praising and blaming is muddy and confused. The elaborate efforts made to understand it in *Ethics* III cannot take us very far. *Ethics* III goes on to talk about various other matters that have to do with praising and blaming, including the difference between “choosing” and “wishing.” Some of what is said about *προαίρεσις* (*pro eye' rest sis*) “choosing,” is relevant to modern legal ideas about premeditation, but what is said in the rest of *Ethics* III, while interesting, is exceedingly convoluted and not particularly relevant to law.

Some might think this was true of all of what Aristotle says about law. Our ideas about law are not the same as Aristotle's, but what Aristotle says in *Ethics* III resonates in modern law. This may say something about the “naturalness” of law. When we talk about praising and blaming, guilt and liability, we do not say the same things Aristotle says, but our talk is about the same things: voluntariness, knowledge, compulsion etc. This may indicate that, given what people are, law either must be or is at least very likely to be about certain questions. Our answers to those questions may differ in some regards, but the questions will be the same.

C. *Ethics*, Book V

In *Ethics* III, Aristotle talks about the language used when people are praising or blaming. In modern legal terms, he is talking about the finding

of guilt or liability. In *Ethics V*, Aristotle talks obliquely about how punishment is imposed on a defendant who has been found “guilty” of a crime and directly about how damages are awarded against a defendant who has been found “liable” for a tort or a breach of contract. Aristotle couches these comments in terms of justness.

The comments in *Ethics V* are the most sustained treatment of law to be found anywhere in Aristotle’s works. If asked to indicate where in his work Aristotle talks about law, most scholars would point first to *Ethics V* and *Ethics V* does contain some incredibly insightful observations about law. But like everything else in *Ethics*, the comments about law in *Ethics V* are overdone and to some extent unintelligible. Not all scholars agree that *Ethics V* is overdone but everyone agrees that there is difficulty understanding parts of it. Thus, one scholar says

The interpretation of Book V is notoriously difficult owing to the use made in it of mathematical formulas which are not always clear, and which seem to give the writer almost as much trouble as they give to the editors.³²³

Another speaks very cautiously about his own understanding when he says:

Aristotle’s meaning, which has caused much difficulty, seems to be explained by ...³²⁴

Of 1134a 10 to 1134a 16, another scholar says:

The details of this section are very difficult, and I have no confidence in any interpretation.³²⁵

The first and most basic thing Aristotle says about justness is that one way to know about something is to know its contrary, and thus, to find out about “a just man,” Aristotle looks at who is called “an unjust man.”

it seems that	the against-law-one	unjust-one to be
<i>dokei dê</i>	<i>ho te paranomos</i>	<i>adikos einai</i>

³²³ J. Burnet, *Ethics of Aristotle* (Methuen, 1900), p. xiii.

³²⁴ W.D. Ross, *Aristotle*, (Methuen, 1923, 5th ed. 1949) p. 119, n.2.

³²⁵ H.H. Joachim, *Aristotle, The Nicomachean Ethics, A Commentary* (Oxford, 1951) p. 141.

and the extra-taking-one and unequal-one
kai ho pleonektês kai anisos

so that it's clear that [the] just-one is the lawful-one
hôte dêlon hoti kai [ho] diakaios estai ho te nomimos

and the equal-one
kai ho isos

the on the one hand just-one the lawful-one and the equal-one
to men dikaion to nomimon kai to ison

the on the other hand unjust-one the against-law-one
to d' adikon to paranomon

and the unequal-one
*kai to anison*³²⁶

This passage is full, but repetitive. Three words in it must be examined carefully: *paranomos*, against-law, *pleonektês*, extra-taking and *anisos*, unequal. I take *paranomos* first because the most striking thing in this passage is that Aristotle puts it ahead of *pleonektês*. I think if we were to say who was an unfair or an unjust man, we would point first to the man who took extra. We might not even point to the unlawful man at all. Sometimes, we think the just man has to go against the law.

When Aristotle explains injustice, he puts doing what is illegal ahead of taking extra. Indeed, as we will see in a moment, Aristotle virtually equates injustice and illegality. At one point, he goes so far as to say, every law is just.

the horizons drawn under lawmaking law is
ta te gar hôrismena hypo tês nomothetikês nomima esti

and each of them justice to be we say
*kai hekaston toutôn dikaion einai phamen*³²⁷

³²⁶ V. i, 1129a 33

³²⁷ V. i, 1129b 13-14..

The Oxford translation captures the sense of this accurately: “for the acts laid down by the legislative art are lawful, and each of these, we say is just.” Because it uses “rules of justice” to translate *dikaion*, the Loeb translation does not capture the full power of Aristotle’s comment: “for what is lawful is decided by legislature, and the several decisions of the legislature we call rules of justice.”

The idea that all enacted legislation is just is striking because modern people often speak of “justice” not as legality, but as something either beyond or in opposition to legality. We think doing justice is doing more than the law requires and we think we act justly when we stand up to an unjust law. But Aristotle repeats the equation several times.

since the against-law-one unjust-one was the lawful-one just
epei d' ho paranomos adikos ên ho d' nomimos dikaios

clear that all the legal things is somehow just
*dêlon hoti panta ta nomima esti pôs dikaia*³²⁸

I will return to Aristotle’s equation of legality and justice in a moment, but first I want to notice two points of translation. One is quite small; the other seems to be small, but is not. The Loeb translation of the passage immediately above is:

Again, we saw that the law-breaker is unjust and the law-abiding man just. It is therefore clear that all lawful things are just in one sense of the word

The Oxford translation has:

Since the lawless man was seen to be unjust and the law-abiding man just, all lawful acts are in a sense just acts.

The Penguin translation has:

³²⁸ V. i, 1129b 12-13.

Again, it is clear that, since the lawless man is, as we saw, unjust and the law-abiding man just, all lawful things may be regarded as just

The first, small point of translation concerns “we saw,” “as was seen” and “as we saw.” These are all supposed to be in the word *hên*, which means “was.” I take them all to be one more example of the translators taking an opportunity to make *Ethics* look even more organized than it is.³²⁹ The second point of translation has to do with *pôs dikaia* (*pos’ dee’ kaya^k*). Since I say Aristotle is talking about language, it seems as if I should especially approve of the Loeb translation’s “just in one sense of the word.” I do not.

I translate *pôs dikaia* as “somehow just,” which is closer to the Oxford translation’s “in a sense just acts,” but I think the word “sense” is misapplied here, as is the Penguin translation’s “may be regarded as.” All three translations are trying to make it clear that there is a distinction between being just and being called “just.” Aristotle does not see the two as distinct. For Aristotle, justice does not exist independently of what people call “just.” This is because justice is metaphysical and the names of metaphysical things are different from the names of physical things.

When a word refers to a physical thing, there is a difference between the word and the thing to which it refers. “A hammer” is not a hammer and there is a physical thing – a hammer – for the word “hammer” to be different from. Metaphysical things are different from physical things. They exist only in being spoken of. This does not mean they are spooky, weird or other worldly, only different. Metaphysical things are physical things seen from a metaphysical point of view.³³⁰

A non-Aristotelian example of a metaphysical thing can be found in the phrase, “it’s raining.” The rain is physical, but the “it” that does the raining is metaphysical.³³¹ One example Aristotle gives of something that is metaphysical is the impression a signet ring leaves in wax. We can see the

³²⁹ Another example is Ross’s translation of the very beginning of V iii: “We have shown that ...” The only thing in the Greek that might bear this reading is *epei*, “since.”

³³⁰ I am not sure about my understanding of “metaphysical.” Perhaps there is matter and form, both of which are physical, and then metaphysical “on top” of that.

³³¹ Wittgenstein said metaphysics, which he decried, was all grammar and usage. His objections were to platonic metaphysics. There is no disagreement between Wittgenstein and Aristotle except about whether to use the word “metaphysics.”

ring, the wax and the impression being left. We can even smear the impression before it hardens, but the impression is metaphysical; if the ring left gold in the wax that would be physical.³³²

The impression is metaphysical because it only exists in our speaking of it. This does not make the metaphysical lower or less than the physical but it means the Supreme Court of Canada used the words “fact” and “metaphysical” exactly incorrectly when it said:

Causation ... is essentially a practical question of fact which can best be answered by ordinary common sense rather than abstract metaphysical theory.³³³

Causation is the perception and description of a metaphysical thing, not a physical or “factual” one. Causation is an aspect of responsibility and the responsibility of the defendant is not a physical thing; it is a metaphysical quality that a court decides to see or not see in a defendant’s actions. An “impression” is the name of the metaphysical thing we see in the wax, just as “health” is the name of the metaphysical thing we see in a healthy person, “justness” is the name of the metaphysical thing we see in certain persons, and “justice” is the name of the metaphysical thing we see in certain actions.

To return to *Ethics* V, Aristotle says that what is legal is somehow just. He goes further and describes the justness that is legality as, *aretê teleia* (*tai' lay' ah*).³³⁴ The Loeb translation renders this as “perfect virtue,” the Oxford and Penguin translations as “complete virtue.” I prefer “goodness” to “virtue” and I think “completed” is better than either “perfect” or “complete.” A *τέλος* (*tell' oss*) is a thing’s “end.” The *telos* of an acorn is an oak. The *telos* of a pine cone is a pine tree. An acorn or pine cone has reached its end when it has become the tree it was supposed to be. It has completed itself. Aristotle says the justice that is legality is “goodness completed.”

This is a striking thing to say because the law can be unjust. Indeed, as I mentioned earlier, we almost tend to think of justice as a contrary to law. Aristotle says that if the law in a *polis* is *orthos*, “straight,” then following

³³² *About Living* (*De. An.*), II.xi, 424a 19.

³³³ *Snell v. Farrell* [1990] 2 S.C. R. 311 para. 29.

³³⁴ V. i, 1129b 26-32

the law is justness.³³⁵ If we fail to notice this, it is because in the *polisses* in which we live, the law is more or less *orthos* and more or less obeyed. If the law under which we lived were either terrible or regularly disobeyed (as it is in some places³³⁶) we would say (as loudly as we dared) that what we wished for was “justness,” meaning nothing other than *orthos* law, obeyed.

To take a less emotional example, we would say an umpire was “unfair” (= “unjust”) if he called balls and strikes differently for the different teams. We would see it as even more “unjust,” however, if an umpire called the same strikes for both teams but said the batters on one team got four strikes. This unjustness – the unjustness of not following the rules – is so obvious that even a biased umpire would not resort to it. Aristotle recognizes this when he says one of the many justnesses is following the law and he says this justness is “completed virtue.”

Aristotle says that when the law is *orthos* and people obey it, that is as just as justice gets. He says that people even speak of “this justness as ‘goodness’” and he sort of agrees that the justness that is legality is goodness. He points out, however, that goodness is *pros auton*, toward oneself, while justness is *pros heteron*, toward another, but except for this small difference, Aristotle says

this justness not part of goodness
hautê men oun hê dikaiosynê ou meros aretês

but the whole goodness it is
all' holê aretê estin

nor the opposite unjustness part of badness
oud' hê enantia adikia meros kakias

but whole badness
*all' holê kakia*³³⁷

³³⁵ Aristotle speaks about the law being *orthos* at V. i, 1129b 25.

³³⁶ In Canada, natives do not agree that the law is either *orthos* or obeyed. Natives now say what I picture other Canadians as saying in other circumstances.

³³⁷ V. i, 1130a 9-11.

Having looked at Aristotle's equation of *paranomos* and *adikos*, "against-law" and "unjust," we must go back and look at the two other things he says are *adikon*, *pleonektês* and *anisos*.

it seems that the against-law-one unjust-one to be
dokei dê *ho te paranomos* *adikos einai*

and the extra taking-one and unequal-one
kai ho *pleonektês* *kai anisos*,

so that it's clear that [the] just-one is the lawful-one
hôte dêlon hoti kai *[ho] diakaios estai ho te nomimos*

and the equal-one
kai ho isos

the on the one hand just the lawful-one and the equal-one
to men *dikaion to nomimon kai to ison*

the on the other hand unjust-one the against-law-one
to d' *adikon to paranomon*

and the unequal-one
*kai to anison*³³⁸

The second, third and fourth times through the formula, *pleonektês* drops out, so that all that is left is

adikon
paranomon – anison

dikaion
nomimon – ison

This is an integrated contrarity. *Pleonektês* adds a level of contrarity to it. *Anison* is when a person treats two other people unequally. *Pleonektês* is when a person treats themselves unequally with someone else. Aristotle sees treating yourself equally with another as the hardest case of treating two

³³⁸ V. i, 1129a 33

people equally. Later in *Ethics* V, he returns to *pleonektês*, as will we, but first we must look at *anison*, which raises a difficult problem of translation.

I translate *anison* as “unequal” and use this translation every time the word occurs; others are not consistent. Here is the Oxford translation of the passage above:

Both the lawless man and the grasping and unfair man are thought to be unjust, so that evidently both the law-abiding and the fair man will be just. The just, then, is the lawful and the fair, the unjust the unlawful and the unfair.

The Oxford translation does not translate *anison* as “unequal.” It translates it as “unfair.” But this is not a uniform practice. Later in *Ethics*, the Oxford translation frequently translates *anison* as “unequal.” At V. iii, 1131a 10, for instance, when Aristotle says

since the unjust man unequal and the unjust act unequal
epei d' ho t' adikos anisos kai to adikon anison,

clear that middle some is of the unequal
dêlon hoti kai meson ti esti tou anisou

this is the equal
touto d' esti to ison

The Oxford translation renders this as

We have shown that both the unjust man and the unjust act are unfair or unequal; now it is clear that there is also an intermediate between the two unequals involved in either case. And this is the equal ...

The first time *anison* appears in this passage, The Oxford translation has “unfair or unequal.” This translation, which marks the Oxford translation’s transition from “unfair” to “unequal,” makes it look as if Aristotle has used two words. The second time *anison* appears in the passage, the Oxford translation leaves out “unfair” and uses “unequal” by itself. When *ison* appears, the Oxford translation translates it simply as “equal.”

There are many other places in *Ethics V* where the Oxford translation uses “equal” and “unequal” to translate *ison* and *anison*. Since some of these are in mathematical formulas, the translations “equal” or “unequal” seems virtually forced and I cannot understand why the Oxford translation does not feel compelled to stick to this translation. When the Oxford translation uses “unfair” to translate *anison*, it is interpreting Aristotle’s meaning, not translating what Aristotle says, and I think this interpretation is wrong. It is not wrong about Aristotle; it is wrong about English.

“Unfair” means the same thing as “unjust.” “Unfair” and “unjust” are both good translations of *adikos*; “unfair” is a bad translation of *anison*. “Unjust” is a bit more formal than “unfair” but, otherwise, the two words mean the same thing. What is unjust is unfair and what is unfair is unjust. If *adikos anison* is rendered “injustice is unfair,” it becomes a tautology. “Injustice is inequality” at least prepares the way for the mathematics that comes later and as Aristotle will explain, what is equal may or may not be fair or just.

Though “unfair” is a bad translation of *anison*, the Oxford translation is not the only one that uses it sometimes. The Loeb translation does the same thing. It translates the passage immediately above

Now since an unjust man is unfair, and the unjust is the unequal, it is clear that corresponding to the unequal there is a mean, namely that which is equal.

“An unjust man is unfair, and the unjust is the unequal” is a misleading way to translate *ho t’ adikos anisos kai to adikon anison*. The translation makes it look as if *anisos* and *anison* were different words. Further confusion is possible in the Loeb translation of the passage in which Aristotle first talks of *paranomos*, *pleonektês* and *anisos*. Unable to decide between “unfair” and “unequal,” the Loeb translation uses both words to translate *anisos*, adding an explanatory footnote

Now the term ‘unjust’ is held to apply both to the man who breaks the law and the man who takes more than his due, the unfair^a man. Hence it is clear that the law-abiding man and the fair man will both be just. ‘The just’ therefore means that which is lawful and that which is equal or fair, and the ‘unjust’ means that which is illegal and that which is unequal or unfair.

a. The word *ισος* means both ‘equal’ and ‘equitable’ or ‘fair’.

As we saw in Chapter III, there is another Greek word, *epieikes*, that is translated “equitable.” Introducing the word “equitable” here can only cause confusion and even with the footnote, the Loeb translation’s use of “equal or fair” and “unequal or unfair” might lead one to think Aristotle had used two different words, rather than one. This danger is minimized with the Loeb translation because the Greek is presented on the page facing the English. The Penguin translation, which is not accompanied by the Greek, is even more likely to produce confusion.

In the popular mind the description ‘unjust’ is held to apply both to the man who takes more than his share and to the man who breaks the law. It follows that the man who does not break the law and the man who does not take more than he is entitled to will be ‘just’. ‘Just’ therefore means (a) lawful and (b) what is ‘equal’, that is fair.

There are several potentially confusing things in this translation. First, Aristotle does not use “fair” as an explanation of “equal.” The Penguin translation’s – “‘equal’, that is fair” – virtually compels a reader to think he did. Second, the Penguin translation’s orthography is confusing. Why are there single quotes around “equal” and no quotes around “fair”? Finally, how can the Penguin translation translate

*to men dikaion to nomimon kai to ison*³³⁹

as

It follows that the man who does not break the law and the man who does not take more than he is entitled to will be ‘just’?

This translation makes one think Aristotle says either:

to men dikaion to nomimon kai ho apleonektês

or

³³⁹ V. i, 1129a 35.

to men dikaion to nomimon kai ou ho pleonektês

Aristotle uses *anison* and its opposite, *ison*, but he does not use any opposite of *pleonektês*.³⁴⁰ Somehow the Penguin translation does not see this and though Aristotle puts *ho paranomos* ahead of *ho pleonektês*, in the first sentence of his translation, the Penguin translation puts “the man who takes more than his share” ahead of the “the man who breaks the law.”

*

If we turn away from the translations and back to what Aristotle says, we see that having remarked on the justness that is “the whole of *aretê*,” he turns next to the justness that is only “part of *aretê*.” I cannot understand this section of *Ethics* V, which is usually numbered V ii. For instance, Aristotle begins *Ethics* V ii with some examples as a “sign” that there is an unjustness that is only part of *aretê*, but the examples he gives are examples of wrongs that do not involve *pleonektês* and, in any case, it is not *pleonektês* that is the whole of *aretê*, it is *paranomos*.

Even if we put this aside, I cannot understand the example Aristotle gives: the man who throws away his shield through cowardice. If ever there were an example of *pleonektês* this would be it. The man who throws away his shield may be a coward, as Aristotle says, but he is also *pleonektês*. The man who throws away his shield is almost the prototypical person taking less than his fair share of the danger, more than his fair share of safety.

Aristotle does not treat him this way. Another example given in V ii is

if on the one hand a man commits adultery to make a profit (*kerdainein, cur^d die' neighn*) and on the other hand a man commits adultery because of appetite, the latter is thought to do something self-indulgent, while the former is thought to do something unjust.

³⁴⁰ Aristotle uses *elaton*, “less,” as the opposite of *pleon*, but he does not use ‘*elattonektes*.’ In his comments on *epieikes* in V x, he uses *elattôtikos*, 1138a 2.

This is an extraordinarily bad example. To imagine a man committing adultery for profit, I have to create a very elaborate story and it is not clear whether I would call the man in such a story “unjust” or not.

If we leave the examples aside, Aristotle’s point seems to be easy enough to understand. The injustice that is not *paranomus* is associated with profit. “If there is profit,” conduct is ascribed to “no wickedness other than unjustness.” Aristotle says this profit can be in “rank or money or safety.”³⁴¹ The Loeb translation has “honour or money or security.” The Oxford translation has “honour or money or safety.” The Penguin translation has “honours, money, security.”

The Greek word they have all translated as “honour” is *τιμή* (*te may*). Another scholar translates *timê* as “position,”³⁴² which is close to my translation, “rank.” Unlike honour, rank, position or standing can be positive or negative. You can have a high rank or a low one. Honour is only positive. There is no negative “honour.” There is “dishonour,” which is the usual translation for *atimia* and in *Politics*, Aristotle does use *atimia* as the opposite of *timê*.³⁴³ But *atimia* is not exactly dishonour. If a charge was brought in the Athenian courts and less than 1/5 of the 100, 500 or 1000 jurors voted against the defendant, the citizen who brought the charge became *atimia*. He lost his civil rights. He could bring no more actions in the court, could not serve as a juror, could not vote in the *ekklêsia*. A man who was *atimia* was not so much dishonoured, as without rank or position. It wasn’t that he had a low standing in the *polis*; he had no standing.

Timê, a citizen’s rank in the citizenry, his standing in the *polis*, comes in two kinds, \pm . There is $+timê$ and $-timê$, honour and reward on the one hand, dishonour and punishment on the other hand. Overwhelmingly, when Aristotle uses the word *timê*, he is talking about $+timê$. This leads to the universal translation of *timê* as “honour,” but other Greek writers use *timê* to be $-timê$ ³⁴⁴ and Aristotle himself uses it that way at least once. At the end of *Ethics*, he speaks of the law imposing *kolaseis te kai timôrias*, punishment

³⁴¹ 1130b 2

³⁴² H.H. Joachim, *Aristotle, The Nicomachean Ethics, A Commentary* (Oxford, 1951) p. 133.

³⁴³ V ii, 1302a 33 and 1302b 12-14.

³⁴⁴ In the *Apology*, after Socrates has been convicted and his accusers have proposed to the jury that he be punished with death, he is given time to make a counter-proposal and the word Plato uses is *antitimasthai*. *Anti* is “counter,” *timasthai* comes from *timê* and cannot mean “honour” here (though Socrates says his punishment should be that he be treated like an Olympic hero). Socrates proposes a “counter-ranking.” That there is $+τιμη$ and $-τιμη$ is part of Plato’s play on the word.

and *-timê*.³⁴⁵ The Loeb and the Oxford translations both translate this as “chastisements and penalties.”

It is instructive to realize that law is about $\pm timê$. We tend to think of honours and punishments as different things. That is why I said earlier that law was about blame but not praise. +rank and –rank, praise and blame, honours and punishment, are the same thing with a different sign, and they, along with money and safety, are the three things in which people try to make a profit.

Aristotle speaks of

pleasure from profit
hêdonên tên apo tou kerdous

Here is the whole passage

but the on the one hand having to do with rank or money or safety (or if some we were to have one name to hold these all) because of the pleasure-from-profit on the other hand having to do with all what is of the serious-one

*all' hê men peri timên ê chrêmata ê sôtêrian ê ei tini echoimen heni onomati perilabein tauta panta kai di' hêdonên tên apo tou kerdous hê de peri hapanta peri hosa ho spoudaios*³⁴⁶

The Oxford translation renders this

but the one is concerned with honour or money or safety – or that which includes all these, if we had a single name for it – and its motive is the pleasure that arises from gain; while the other is concerned with all the objects with which the good man is concerned.

The Loeb translation has:

³⁴⁵ X.ix., 1180a 9. I'm not sure this is the only time Aristotle uses *-τιμη*, but it is the only one I am aware of.

³⁴⁶ 1130b 2-5.

but whereas Injustice being exhibited in the particular sense is concerned with honour or money or security, or whatever term we may employ to include all these things, its motive being the pleasure of gain, Injustice in the universal sense is concerned with all the things that are the sphere of Virtue.

The Penguin translation has:

But they are differentiated in this way. Particular injustice is interested in honours, money, security – or all three if we can find a single name to cover them – with the one purpose of deriving pleasure from the advantage they yield. Universal injustice, however, occupies the same ground as perfect virtue.

We have already looked at *peri timên ê chrêmata ê sôtêrian* – rank money and safety – and at *di' hêdonên tên apo tou kerdous* – pleasure from profit. I now turn to *ó σπουδαῖος*, *ho spoo' die' oss*. The Oxford translation translates it as “the good man.” The Loeb translation translates it as “the sphere of Virtue.” The Penguin translation has “perfect virtue.” All three of these translations make *spoudaios* the same as *aretê*, but the two are not the same. *Aretê* is “goodness” or “virtue.” *Spoudaios* is “seriousness.” Thus, when the Loeb translation has Aristotle saying in *Metaphysics* that “it is not worth while to consider seriously the subtleties of mythologists,”³⁴⁷ the word that is being translated as “seriously” is *spoudês*. When Aristotle says in *Politics*,

because that of children to be must be many
dio tas paidias einai dei tas pollas

*mimesis*³⁴⁸ of what later they will take seriously
*mimêseis tôn hysteron spoudazomenon*³⁴⁹

the Loeb translation has “hence most children’s games should be imitations of the serious occupations of later life”³⁵⁰ and the Oxford translation has,

³⁴⁷ H. Tredennick, *Metaphysics*, (Harvard, 1933) III.ii, 1000a 18-19.

³⁴⁸ *Mimesis* is a very hard word to translate. It means “artistic recreation,” “artful representation,” “mimicry” or “imitation.”

³⁴⁹ VII. xvii, 1336a 33

³⁵⁰ Rackham, *Aristotle, Politics* (Harvard, 1932).

“even the games of children should be for the most part mimics of what will later be earnest.”³⁵¹

It would not be impossible to use some form of “good” or “virtue” in this passage about children’s games, but to do so would change the slant of the passage. The same is true for the passage in *Rhetoric* where Aristotle says

and to those being serious toward the serious things
kai tois spoudazousi pros tous spoudazontas

it seems they make themselves serious but not down-thinking
*dokei gar spoudazesthai all ou kataphronesthai*³⁵²

The Loeb translation renders this as “... those who are serious with them when they are serious, for they think they are being treated seriously, not with contempt.”³⁵³ and the Cambridge translation renders it as “... towards those who deal earnestly with our earnestness; for this earnestness seems to exclude disdain.”³⁵⁴

Aristotle does not contrast the “pleasure-of-profit” with “all the objects with which the good man is concerned,” or with “all the things that are the sphere of Virtue” or on “the same ground as perfect virtue.” He contrasts the pleasure-of-profit with all the things people are serious about. He treats the pleasure-of-profit as trivial, not bad.³⁵⁵

Aristotle now returns to the contrariness that injustice is illegality and inequality. *To adikon to te paranomon kai to anison.*³⁵⁶ Inflatedly, the text adds that justice is lawful and equal. The Oxford translation has

The unjust has been divided into the unlawful and the unfair,
and the just into the lawful and the fair.

³⁵¹ E. Barker, *Aristotle, Politics* (Oxford, 1946).

³⁵² II.iii.7 1380a 27

³⁵³ J.H. Freese, *Aristotle, Rhetoric* (Harvard, 1926).

³⁵⁴ R.C. Jebb, *Aristotle, Rhetoric* (Cambridge, 1909)

³⁵⁵ It is worth noting that the Greek root *spouda* occurs 87 times in *Ethics* in 31 different forms. It is always translated as if it were *aretê*. Insistently using “virtue” or “goodness” to translate *spouda* inflates *Ethics* in the way described above; it gives a slant to the text. Some uses of *spouda* may call for “good” as a translation, but it would change the tone of *Ethics* quite dramatically if some of the 87 *spoudas* were translated, “serious” or “earnest.”

³⁵⁶ V. ii, 1130b 8

As I have indicated, I prefer “unequal” to “unfair” because “unfair” is too close to “unjust.” Once again The Loeb translation cannot decide whether *anison* should be translated as “unequal” or “unfair” so it uses both translations.

Now we have distinguished two meanings of the ‘the unjust,’ namely the unlawful and the unequal or unfair and two meanings of ‘the just,’ namely the lawful and the equal or fair.

The Penguin translation has the same problem and translates

Now we have seen that there are two ways in which the word ‘injustice’ is used. In one it means ‘contrary to law’, but it has another meaning, namely, ‘contrary to fairness’ or ‘to equality’.

As I have said, this usage is potentially very confusing; reading these translations, one might wonder whether Aristotle was drawing a distinction between the “unequal” and the “unfair.” Apparently both the Loeb and the Penguin translations realize there is some danger of confusion. The Loeb drops “unequal” immediately and translates the next words

Injustice then, in the sense previously mentioned, corresponds to the meaning ‘unlawful’; but since the unfair is not the same as the unlawful, but different from it, and related to it as part to whole (for not everything unlawful is unfair, though everything unfair is unlawful) ...

The Penguin translation uses “unfair or unequal” once more, but then it too drops the double usage.

What is thus unfair or unequal is distinguished from what is lawful as part from whole, everything that is unfair being unlawful, but not everything unlawful being unfair.

Notice that while the Penguin translation does not, the Loeb translation makes the last remark parenthetical in both Greek and English. So does the Oxford translation: “(for all that is unfair is unlawful, but not all that is unlawful is unfair).” The parentheses are certainly not Aristotle’s. Some later scholar has marked this passage off and I can almost understand

why. What Aristotle says in the parentheses is very powerful and does not seem to fit with the rest of the paragraph.

(the on the one hand unequal all against-law
(to men gar anison hapan paranomon

the on the other hand against-law not all unequal)
to de paranomon ouch hapan anison)³⁵⁷

So the *paranomon* is the whole of *aretê* and the *anison* is part of the *paranomon*. One could take what is said in the rest of the paragraph as an explanation of what is said in the parentheses, or one could take what is said in the parentheses as an illustration of what is said in the rest of the paragraph. I'm not sure how to take it because I cannot understand what Aristotle is saying.

Here is the Oxford translation of some of the material around the parenthetical remark.

The unjust has been divided into the unlawful and the unfair, and the just into the lawful and the fair. To the unlawful answers the aforementioned sense of injustice. But since the unfair and the unlawful are not the same, but are different as a part is from a whole (for all that is unfair is unlawful, but not all that is unlawful is unfair), the unjust and injustice in the sense of the unfair are not the same as but different from the former kind, as part from whole; for injustice in this sense is a part of injustice in the wide sense, and similarly justice in the one sense of justice in the other.

Even if I change “unfair” to “unequal,” I cannot make sense of this. I can see that Aristotle is saying there are two unjustnesses – the unlawful and the unequal – one of which is smaller than the other. And it sounds as if the unequal is smaller than the unlawful; some unlawfulness is not a matter of inequality. But what sort of unlawfulness could this be? Why would anything be *paranomon* that wasn't *anison*?

³⁵⁷ V. i, 1130b 12-13.

I can answer this question if I think of a law that is purely conventional, something like driving on the right hand side of the road. This unlawfulness is not about goodness or badness or equality or anything other than orderliness. Three strikes and you're out is certainly conventional. But Aristotle goes on in the Oxford translation to say:

the majority of the acts commanded by the law are those which are prescribed from the point of view of virtue taken as a whole; for the law bids us practice every virtue and forbids us to practice any vice. And the things that tend to produce virtue taken as a whole are those of the acts prescribed by the law which have been prescribed with a view to education for the common good.

This makes lawfulness sound much more than conventional and makes it impossible for me to understand what Aristotle means in this passage. In *Rhetoric*, Aristotle distinguishes between breaches of the law that hurt one person and breaches that hurt everyone, but he never mentions breaches that do not hurt anyone. Aristotle does not have the idea of victimless crime. There are no serious illegalities that do not hurt someone and hurting someone when they do not deserve it is *anison*. If law has to do with "virtue" and "vice" how can it be about something other than treating people unequally?

Maybe the answer is this: Whenever people try to understand or explain what Aristotle says in this parentheses, they draw a large circle with a small circle inside it. The bigger circle is labeled *paranomon*, the smaller circle, *anison*. To make Aristotle's point clear, there is usually a big difference between the sizes of the two circles. If the small circle were made only a tiny bit smaller than the large circle, then I could understand what Aristotle is saying. There is a tiny little bit of *paranomon* that isn't *anison*. If that's all he is saying, O.K., then I understand, but I think *Ethics* makes too much of it. This is what I mean when I say it is inflated.³⁵⁸

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I find *Ethics* V ii troubling because I do not understand it. I find *Ethics* V iii troubling because I understand it far too easily. V iii suggests

³⁵⁸ Another possible answer is to think of crimes like blasphemy and treason as victimless.

that a very simple mathematical observation has tremendous moral significance. At first blush, it might seem as if I would appreciate this because in Chapter III I spoke favorably of the idea that justice was 2^2 but “justice is 2^2 ” is said in less than one line and here the math goes on for pages. The math in V iii is vastly overcomplicated for its significance. One way to deal with this is to say, as one scholar does, that mathematics was “the one province of human knowledge in which Aristotle did not show himself a master.”³⁵⁹ Another is to say, this is not Aristotle.

Other scholars have speculated along the same lines. There are two books called *Ethics* in Aristotle’s works, the *Nicomachean Ethics* and the *Eudemian Ethics*.³⁶⁰ The *Nicomachean Ethics* is named for Aristotle’s son, Nicomachus. It is now said to be by Aristotle, but scholars used to say it had been written by Nicomachus.³⁶¹ The *Eudemian Ethics* is named after, Eudemos, a student of Aristotle’s. It is different from the *Nicomachean Ethics* and much less widely studied. Many scholars say Eudemos wrote this work based on Aristotle’s notes and lectures.

Books V, VI and VII of the *Nicomachean Ethics* are virtually identical with Books IV, V and VI of the *Eudemian Ethics*, and if the same text occurs in works by two different authors, we tend to think one of them may have gotten the text from the other. One of the bases on which *Ethics* V is ascribed to Aristotle is that Eudemos is supposed to have been a great mathematician. The mathematics in *Ethics* V is thought to be too bad to have been done by Eudemos. It is at least partly on this demeaning basis that the *Nicomachean Ethics* is now assigned to Aristotle.

Ethics V was written by a mathematical simpleton. Perhaps this simpleton was Aristotle. Perhaps it is his work that was introduced into Eudemos’ work. It is also possible, however, that the mathematics in *Ethics* V was the work of some unnamed third party and was introduced into both Eudemos’ work and the inflated work of Aristotle. Perhaps the person who wrote *Ethics* V was the one who began the process of inflating *Ethics*. I do not make this suggestion with any confidence. I don’t know exactly how *Ethics* got to be what it is.

³⁵⁹ p. xiii. There is some disagreement about Aristotle’s mathematical abilities. Perse, for instance, says Aristotle was a good mathematician.

³⁶⁰ There is also the *Big Ethics*. It is not the subject of much interest.

³⁶¹ See, H. Jackson, *The Fifth Book of the Nicomachean Ethics of Aristotle*, (Arno, 1973; Cambridge, 1879) p. xxii- xxxii.

The problem of the mathematics first becomes serious in the third chapter of *Ethics* V, where Aristotle speaks of distributive justice. He says there is a *meson*, a middle, between *pleon*, extra, and *elaton*, less. The *meson* is *ison*.³⁶² This *ison* is uniformly translated as “equal,” though one could use “fair.” One could say that between too much and too little comes a “fair” share, but the translators do not. They all use “equal.”³⁶³ This is virtually forced by the mathematics that follows. This mathematics is done in terms of the lengths of certain lines. Aristotle describes them in words, rather than numbers. One of the words used to describe the lengths of the lines is *ison*. One could hardly say the length of two lines was “fair.”

Doing mathematics in words takes a lot of words and using lengths of lines makes the mathematics in V iii seem complicated. If what Aristotle says in V iii is expressed in numbers, it is very simply:

$$2/3 = 6/9$$

$$2/6 = 3/9$$

In words, if one man has a merit of 2, and another a merit of 6, and the first gets 3 somethings, the second should get 9. There are two formulas because, as Aristotle points out, the formula will work either as

person/thing : person/thing

or as

person/person : thing/thing.

Aristotle also points out that on the one hand the formula can be put the way it has been put; on the other hand it can be put

$$2/4 = 4/8$$

$$2/4 = 4/8$$

The second way of putting it is different because all the middle terms, the terms adjacent to the equal signs, are 4. The first way of putting the formula

³⁶² 1131a 13

³⁶³ I think *ison* is translated as “unfair” in *Ethics* V ii and as “unequal” in *Ethics* V iii.

has two different numbers, 3 and 6, adjacent to the equal signs. Aristotle points this difference out but says it doesn't make any difference.³⁶⁴

The mathematics of distributive justice expresses the observation

still from according to merit this clear
eti ek tou kat' axian touto dêlon

the justice in the distribution
to gar dikaion en tais dianomais

they same-say all according to merit some must to be
*homologousi pantes kat axian tina dein einai*³⁶⁵

Loeb: This is also clear from the principle of 'assignment by desert.' All are agreed that justice in distributions must be based on desert of some sort

Ethics is supposed to be intended to "guide and improve life" but Aristotle expressly says everyone already agrees that a just distribution of things is somehow related to merit. How, other than proportionally, could it be related to merit? And how could expressing it mathematically "guide and improve life?" Knowing the mathematical formula for distributive justice is useless, unless one knows what numbers to put in it. Aristotle never says anything about the numbers to be put in the formula, except that it is very hard to find them.

Even if his elaborately constructed merit formula could somehow be helpful, Aristotle unravels this possibility, when he adds:

though merit not the same they say all
tên mentoi axian ou tên autên legousi pantes

Loeb: although they do not all mean the same sort of desert.

³⁶⁴ If there is any point to Aristotle's point here, it is related to the logic of syllogisms.

³⁶⁵ V. iii, 1131a 25-6

The hard thing about ethics is not saying people should get what they deserve; it is figuring out what people deserve, and Aristotle does not tell us how to do this. He merely says it is hard to do.

Aristotle gets to the formula because he says

it is the justice *analogon* some
*estin ara to dikaion analogon ti*³⁶⁶

Loeb: Justice is therefore a sort of proportion.

Oxford: The just then, is a species of the proportionate.

I prefer “analogue” to “proportion.” An analogue is one word in place of another. An example is: “guilty” is to “crime” as “liable” is to “tort.” This does not express a “proportion” but it is an analogue. It shows the relationship between four words. Talking mathematically, using numbers or lengths of lines, makes an analogue look like a formula or a proportion.

Aristotle says

the analogue equal it is word and in four at least
*hê gar analogia isotês esti logôn kai en tettarsin elachistois*³⁶⁷

Loeb: proportion being equality of ratios and involving four terms at least.

Oxford: For proportion is equality of ratios, and involves four terms at least

To translate *analogos* as “proportion” and *logos* as “ratio” overmathematizes an already overmathematized passage and makes people think the formula is more significant than it is. This is confusing. One consequence of this confusion is that the Greek at the end of the presentation of the formula is controversial. At line 1131b 11, some editions of the Greek text have

³⁶⁶ V. iii, 1131a 30.

³⁶⁷ V. iii, 1131a 31-32.

and middle the just this is the against the analogue
kai meson to dikaion tout' esti tou para to analogon

the analogue middle the just analogue
*to gar analogon meson to de dikaion analogon*³⁶⁸

Other editions have an addition to the first line:

and middle the just this is <the injustice> the against the analogue
*kai meson to dikaion tout' esti <to adikon> to para to analogon*³⁶⁹

A different kind of bracket is used here from the ones we encountered earlier. These brackets are used not to remove words, but to add them. Adding *to adikon*, “injustice,” makes it possible for the Oxford translation to render this passage

And this species of the just is intermediate and the unjust is what violates the proportion; for the proportional is intermediate, and the just is proportional.

The Loeb translation, which does not add *to adikon*, has:

and the just in this sense is a mean between two extremes that are disproportionate, since the proportionate is a mean and the just is the proportionate.

The addition of *to adikon* is tempting because it makes the passage more intelligible and because less than 10 lines later all the editions have Aristotle saying

the on the one hand justice this the analogue
to men oun dikaion touto to analogon

the on the other hand injustice the against the analogue
*to d' adikon to para to analogon*³⁷⁰

³⁶⁸ W.E. Jelf (Oxford, 1856), F. Susemihl (Teubner, 1912) and J. Voilquin (Garnier Frères, 1940)

³⁶⁹ E.g. Bywater, *Aristotelis Ethica Nicomachea* (Oxford, 1890)

³⁷⁰ V. iii, 1131b 17.

Ethics V iii is thought to contain some sort of wisdom about distributing things justly. To me it seems overcomplicated. Once the complications are removed, it seems trivial. According to Aristotle, the basic insight, that distribution must somehow follow merit, is something about which everyone already agrees. If we add to this that people disagree about what counts as merit, the expression of this insight in a mathematical formula is grossly over-inflated.

It may have been Aristotle who wrote this formula down, but it need not have been. Just as the answers in *Problemata* were written by a student in response to questions from Aristotle, so the formula in V iii could have been written by a student to elaborate a few basic points that Aristotle expressed much more simply and cryptically in his notes. Perhaps Aristotle made the point, Eudemos expressed it in good mathematics, and some third person wrote what we have and inserted it into both the *Nicomachean* and the *Eudemian Ethics*.

*

Ethics V iv begins with *men/de*

the on the one hand <i>to men oun</i>	one idea of justice this it is <i>hen eidos tou dikaiou tout estin</i>
the on the other hand <i>to de</i>	left over one the <i>diorthôtikon</i> <i>loipon hen to diorthôtikon</i> ³⁷¹

The Oxford translation puts the *men* clause as a separate paragraph at the end of V iii.

... choice a greater good.
This, then, is one species of the just.

4. (B) The remaining one is the rectificatory,

The Loeb translation does the same thing:

... the greater good it is.

³⁷¹ V. iv, 1131b 25.

This then is one kind of Justice.

iv. The remaining kind is Corrective Justice.³⁷²

I can half understand why they opt for this way of expressing *men/de*. One can see the subsections of *Ethics V* as paragraphs. A paragraph is often thought to start with a new idea, but when used properly, the last sentence of one paragraph and the first sentence of the next one contain the first and second halves of one idea.³⁷³ *Men/de* could be seen as this kind of bridge.

But if I can understand the way the Oxford and the Loeb translations deal with this *men/de*, it is hard to understand the Penguin translation's way of dealing with it. It leaves the *men* clause out entirely. Its translation of V iii ends

... the degree of goodness being measured by its desirability.

and its translation V iv begins

We come now to the remaining kind of justice, the 'corrective' or 'emendatory'.

I translate *diorthôtikon* as "straightening." This word obviously comes from *orthos*, which I translate as "straight." I think we should hark back linguistically to Aristotle's remark that when the law is *orthos*, justice is obeying it. *Diorthôtikon* justice puts things back where the law is *orthos* and can simply be obeyed. The Loeb, the Oxford and the Penguin translations all translate *orthos* as "rightly," to which the Loeb's "Corrective," the Oxford's "rectificatory" and the Penguin's "'corrective' or 'emendatory'" bear only a very eviscerated linguistic relation (right – rect).

The big difference between distributing justice and straightening justice is that distributing justice is based on *axian* "merit," while with straightening justice merit does not matter.

³⁷² As I pointed out above, Rackham's practice is to translate *dikaiosynê* as "Justice" and *dikaion* as "justice", but here he translates *dikaion* as "Justice" and creates a capital C for "Corrective."

³⁷³ The proper use of paragraphs can be seen in J. H. Merryman, *The Civil Law Tradition*, (Stanford, 1985).

not it is different if fitting³⁷⁴ foul it defrauded
outhen gar diapherei ei epieikês phaulon apesterêsen

or foul fitting
ê phaulos epieikê,

nor if adultery fitting or foul
oud' ei emoicheusen epieikês ê phaulos,

but to the injury the difference only looks the law
alla pros to blabous tèn diaphoran monon blepei ho nomos

and using as equals
kai chrêtai hês isois

if the on the one hand does injustice
ei ho men adikei

the on the other hand having injustice done
ho d' adikeitai,

and if injured the on the other hand has been injured
*kai ei eblapsen ho de beblaptai*³⁷⁵

Loeb: For it makes no difference whether a good man has defrauded a bad man or a bad man a good man, nor whether it is a good or bad man that has committed adultery; the law looks only at the nature of the damage, treating the parties as equal, and merely asking whether one has done and the other suffered injustice, whether one inflicted and the other sustained damage.

V iv supplies an analogue for straightening justice. It is a contrary of the analogue set out in V iii for distributing justice, a contrary in two ways. First, the analogue in V iii involves merit and the analogue in V iv does not. Second, the analogue in V iii is geometrical, while Aristotle expressly says the analogue in V iv is arithmetical, rather than geometrical. I do not understand what Aristotle means by “arithmetical” because the analogue in

³⁷⁴ The same word is used for a fitting or good person and a fitting or “equitable” legal result.

³⁷⁵ V. iv, 1132a 2-7.

V iv is described using the lengths of lines. Other scholars do not understand this either and say Aristotle uses certain mathematical words differently from us.³⁷⁶

Like the mathematics in V iii, the mathematics in V iv is very wordy. It has been the subject of a great deal of commentary. All the translations have extensive footnotes explaining what Aristotle is saying and these explanations generally include diagrams. Aristotle is pictured as referring to charts while he is lecturing. Thus at one point in the Loeb translation there is a footnote saying: “Here the lecturer displayed a diagram.” And later another footnote saying. “Here was another diagram.”

The impression conveyed by all the scholarly apparatus is that in *Ethics* V iv, Aristotle is saying something very complicated and difficult to understand. He is not. If the point is put numerically, instead of in terms of lengths of lines, it is trivially simple: if the *orthos* law makes two people equal (let us say each has 6 of something) and the two people have some kind of interaction – *synallagmata*, “with-otherings” – in which one makes a “profit” (*κέρδος kerdos*) of 2 and the other suffers a “loss” (*ζημία zêmia*) of 2, then one will have 8 and the other will have 4. To straighten this out, the law takes 2 from the one with 8 and gives it to the one with 4. This makes them equal again; both have 6.

The wordy mathematics makes this look both complicated and important. It is neither. Two other things make it confusing. One of these is in the text, the other is in the text as it is translated. The one that is in the text alone is in V v, where Aristotle insists that straightening justice is not *antipeponthos*, “re-back-putting.” It certainly looks like re-back-putting, but we will return to this point in a moment. The second confusing thing about straightening justice is that, because of the way it is explained in *Ethics* V and because of the way the explanation is translated, it seems as if straightening justice would undo every business deal in which someone made a profit and someone else suffered a loss.

This is exactly the wrong impression. Straightening justice does not apply to business deals. Aristotle says straightening justice applies mostly to *synallagmata* that are *akousia*, without will. Straightening justice applies only marginally to *synallagmata* that are *hekousia*, with will. In V ii a list is

³⁷⁶ E.g. Rackham, p. 272.

provided of the different “transactions” which straightening justice straightens. Here is the Loeb’s translation of the list, notice the footnotes.

The other kind is that which supplies a corrective principle in private transactions. This Corrective Justice again has two subdivisions, corresponding to the two classes of private transactions, those which are voluntary and those which are involuntary. Examples of voluntary transactions are selling, buying, lending at interest, pledging, lending without interest, depositing, letting for hire; these transactions being termed voluntary because they are voluntarily entered upon.^c Of involuntary transactions some are furtive, for instance theft, adultery, poisoning, procuring, enticement of slaves, assassination, false witness; others are violent, for instance, assault, imprisonment, murder, robbery with violence, maiming, abusive language, contumelious treatment.³⁷⁷

^b ‘Involuntary’ here means lacking the consent of one of the parties.

^c In c.iv. below, the writer gives no illustration of the operation of Corrective Justice in Voluntary Transaction, but he is clearly thinking of actions at law for damages resulting from breach of contract.

So Aristotle is distinguishing between straightening the with-otherings that come from contract and the with-otherings that come from breach of contract. Another scholar makes this same point in his commentary.

If a man has freely made a bad bargain he must abide by it. Law gives him no remedy: it recognizes freedom of contract. It gives the better bargainer *ἀδεια* (security). Hence, normally at any rate, in a voluntary transaction there is no possibility of A’s action producing a result unfair to B from the beginning; but there may be a failure on the part of A or B to carry out the terms of the contract, and if so a result unfair to B or A will be produced later on. And, when that occurs, the law is called in to redress the wrong.³⁷⁸

³⁷⁷ 1131a 3-9. For “contumelios treatment” Ross has “insult.”

³⁷⁸ p. 137-38.

Many passages in Aristotle's works call for explanation, but here all the explanation explains is something that is trivial. The need for so much explanation of so simple a point is one of the reasons I think this text has been improved by someone other than Aristotle. More important, this "improvement", this explanation in terms of contracts is misleading. Aristotle is talking more about torts than contracts.

Straightening justice does not work on business deals, but works when one person steals from another or hurts them in some other illegal way. If one stressed the "breach" in "breach of contract" that would not be so confusing. But Aristotle insists on using the terms "profit" and "loss" to describe the situations in which straightening justice works and these terms are about contracts not breaches of them. Aristotle knows the terms "profit" and "loss" are misleading, but he uses them anyway. At one point, in a passage that is presented parenthetically in the Greek, he says,

(he says as simply to say to this these
(legetai gar hōs haplōs eipein epi tois toioutois

would if not some at home name be
kan ei mē tisin oikeion onoma eîē

the profit as to the ones who knock
to kerdos hoion tô pataxanti,

and the loss to the one it happens to ...
kai hē zêmia tô pathonti ...³⁷⁹

Oxford: For the term 'gain' is applied generally to such cases – even if it be not a term appropriate to certain cases, e.g. to the person who inflicts a wound – and 'loss' to the sufferer.

When two people make a contract, that is a *synallagmata* that starts *hekousia* on both sides. The breach is *akousia* on one side. When one person robs another that is a *synallagmata* that doesn't start with both parties *hekousia*. Robbery is *akousia* on the part of the victim the whole way through the *synallagmata*. When one person hits another with a car, that is a with-othering that is without the will of both people all the way through.

³⁷⁹ V. iv, 1132a 11-13.

“Profit” and “loss” are most at home in contract. For us, as for Aristotle, it is not exactly “at home” to say the driver of a car “profits” from the accident. Still, drivers do profit from the activity of driving, and as for the “loss” of the victim, we have no problem speaking about that. At the end of the parenthetical, Aristotle explains why.

... but when is measured the what happened
 ... *all' hotan ge metrêthê to pathos*

it is called the on the one hand loss the on the other hand profit)
*kaleitai to men zêmia to de kerdos)*³⁸⁰

Ross: at all events when the suffering has been estimated, the one is called loss and the other gain.

The use of “transactions” as a translation of *synallagmata* is unfortunate because it adds to the confusion that *Ethics* V iv creates by talking about straightening justice in terms of “profit” and “loss.” “Transactions” suggests that when Aristotle talks about straightening justice, he is talking primarily about business deals, but business deals are precisely the *synallagmata* with which straightening justice does not deal.

picked up the names these the both loss and the profit
elêlythe de ta onomata tauta hê te zêmia kai to kerdos

from the with-will othering the on the one hand
ek tês hekousiou allagês, to men gar

more has than of himself to profit is said
pleon echein hê ta heautou kerdainein legetai,

the on the other hand less from the beginning to lose
to d' ellaton tôn ex archês zêmiousthai,

as in the buying and selling and in which others
hoion en tô ôneisthai kai pôlein kai en hosois allois

³⁸⁰ V. iv, 1132a 13-14.

freedom has given the law
*adeian*³⁸¹ *dedôken ho nomos*³⁸²

Oxford: These names, both loss and gain have come from voluntary exchange; for to have more than one's own is called gaining, and to have less than one's original share is called losing, e.g. in buying and selling and in all the other matters in which the law has left people free to make their own terms.

V iv confuses everyone by borrowing the terms “profit” and “loss” from business transactions, *hekousia synallagmata*, and applying them to things like assault, *akousia synallagmata*, where at least the term “profit” is not “at home.” Aristotle noticed something about the use of the words “profit” and “loss.” Someone has turned that insight into a theory about justice and added some useless mathematics to it. This is precisely what is most wrong with *Ethics* and V iv has generated an immense amount of explanation by commentators and translators.

In V iv, Aristotle also says:

so that the re-straightened justice would be
hôte to epanorthôtikon dikaion an eiê

the middle loss and gain
*to meson zêmias kai kerdous*³⁸³

³⁸¹ I translate *adeian* as “freedom.” Ross does the same. Rackham translates the phrase as “sanctioned by law.” Thomson has “permitted by law.” Joachim says the law gives “the better bargainer ἀδεια (security).” The relationship between these different translation is quite interesting.

I note that Thomson presents this paragraph as if it were his own footnote. In his text it looks like this:

... then DCC' will exceed BB' by CD.*

* A note on terminology. The expressions “gain” and “loss” are borrowed from the process of voluntary exchange. In that process to have more than one's fair share of the bargain is called ‘gaining’, to come out of it with less than one's fair share is ‘losing’. They are words used , for example, in buying and selling and all other exchanges permitted by law ...

I find this presentation confusing and cannot imagine the reason for it. Readers would more than likely take this footnote as if it had been added by Thompson himself. It looks exactly the same as other footnotes that Thomson has added and there is no indication that it comes from the text.

³⁸² V.iv, 1132b 12-16.

³⁸³ V. iv, 1132a 18-19.

The Loeb translation notices that Aristotle has changed from *diorthôtikon* to *epanorthôtikon* and translates this way.

it follows that Justice in Rectification^e will be the mean between loss and gain.

^e A slightly different term is here introduced, but apparently without difference of meaning.

The Oxford translation makes no mention of the change: “therefore corrective justice will be the intermediate between loss and gain.” Like the Loeb translation, I am not sure what if anything the change means. We will see the word *epanorthôtikon* later.

Aristotle continues his “analysis” with a further pun about the words *dikaion*, justice and *dikastês*, juror:

wherefore when they disagree to the juror they down-flee
dio kai hotan amphisbêtôsin epi ton dikastên katapheugousin

to the juror to go to go they are to the justice
to d' epi ton dikastên ienai ienai estin epi to dikaion

the juror wants to be like justice brought-to-life
*ho gar dikastês bouletai einai hoion dikaion empsychon*³⁸⁴

Loeb: This is why when disputes occur men have recourse to a judge. To go to a judge is to go to justice, for the ideal judge is so to speak justice personified.

I cannot understand why the Loeb translation leaves out the word *bouletai*, “wants.” The Oxford translation does the same thing: “for the nature of the judge is to be a sort of animate justice.” The Penguin translation includes *bouletai*: “The judge aims at being as it were the incarnation of justice.”

Inflatedly, Aristotle continues the punning even further.

³⁸⁴ I cannot recall another instance in Aristotle’s work where the exact same word appears twice in a row as *ienai* does here.

and they seek a juror middle and they call some *mesidous*
kai zetousi dikastên meson kai kalousin enioi mesidous

as if the middle they chance the justice is found
hôs ean tou mesou tychôsi tou dikaiou teuxomenoi

middle some the justice as if the juror
*meson ara ti to dikaion, eiper kai ho dikastês*³⁸⁵

Loeb: Also, men require a judge to be a middle term or *medium* – indeed in some places judges are called *mediators*. For they think that if they get the mean they will get what is just. Thus the just is a sort of mean, inasmuch as the judge is a medium between the litigants.

The Penguin translation also uses “mean” to translate *meson*. “People think that, if they get the mean they will get the just. Thus the just is in its way a mean ...” I think “the mean” is too mathematical. The “mean” is a particular number. The “middle” is not. The Oxford translation uses “intermediate,” which seems to me better.

Oxford: And they seek the judge as an intermediate, and in some states they call judges mediators, on the assumption that if they get what is intermediate they will get what is just. The just, then is an intermediate, since the judge is so.

It is a shame that the way the English language has developed we cannot use “middlemen” as a translation for *mesidous*.

It is at this point that Aristotle begins to bring in the mathematics.

the juror re-equalizes
ho de dikastês epanisoi

and as if line into unequal having been divided
*kai hôsper grammês eis anisa tetmêmenês*³⁸⁶

³⁸⁵ V. iv, 1132a 23-25.

³⁸⁶ V. iv, 1132a 25-26.

Epanisoi harks back to *epanorthôtikon* and the Oxford translation continues:

Now the judge restores equality; it is as though there were a line divided into unequal parts, and he took away that by which the greater segment exceeds the half and added it to the smaller segment.

I will not go on with the mathematics in V iv. As I have already said, it makes something very simple seem very complicated. I pass, instead, to V v and “re-back-doing,” *antipeponthos*.

it seems to some re-back-doing to be simply justice
dokei de tisi kai to antipeponthos einai haplôs dikaion

as the Pythagoreans said
hôsper hoi Pythagoreioi ephasan

drawing the line simply the justice the re-back-doing other
horizonto gar haplos to dikaion to antipeponthos allô ³⁸⁷

Loeb: The view is also held by some that simple Reciprocity is Justice. This was the doctrine of the Pythagoreans, who defined the just simply as ‘suffering reciprocally with another.’[°]

[°] That is retaliation: A shall have done to him what he has done to B.

Poieô, from which *antipeponthos* comes, means “to make” or “to do.” The Oxford translation also uses “reciprocity” for *antipeponthos* and so does the Penguin. I use “re-back-doing” because I think it is important that something is being done, not just that it is being done reciprocally. I will say something more about this translation in a moment.

Aristotle says,

re-back-doing does not harmonize neither with distributing justice nor with straightening.

³⁸⁷ V.v, 1132b 21.

They are often different, he says, and he gives this example: if an official hits someone, he must not hit him back, and if someone hits an official, he should not just be hit back, but also punished. Notice that this comment assumes officials are good. If a bad official hits someone, does he not deserve more punishment than if he were not an official?

Aristotle's comments about justice in *Ethics* all assume that the law is *orthos*. Without this assumption, what is said about straightening justice makes no sense, but Aristotle now proceeds to unravel this assumption.

the back-doing analogue is with-staying³⁸⁸ the *polis*
tô antipoiein gar analogon symmenei *hê polis*³⁸⁹

Oxford: for it is by proportionate requital that the city holds together.

Loeb: The very existence of the state depends on proportionate reciprocity.

Penguin: It is just the feeling that, as one does, so one will be done by, that keeps the political association in being.

Re-back-doing is not justice, but it holds the *polis* together. Aristotle talks about it extensively in V v, indeed, he creates another elaborate analogue to explain it. This is the analogue of money.

the with-will and the without will different much
eti to hekousion kai to akousion *diapherei polu*

but in the common the otherings
all' en men tais koinôniais tais allaktikais

with-goes this justice
*synechei to toiouton dikaion*³⁹⁰

Loeb: Again it makes a great difference whether an act was done with or without the consent of the other party. But in the

³⁸⁸ *Symmenei* sounds like “cements” which is what it means.

³⁸⁹ V.v, 1132b 35.

³⁹⁰ V. v, 1132b 31-33.

interchange of services Justice in the form of Reciprocity is the bond that maintains the association.

Oxford: there is a great difference between a voluntary and an involuntary act. But in associations for exchange this sort of justice does hold men together

Penguin: It is true that in the give and take of mutual services this kind of justice – reciprocity of treatment – forms the bond between the parts of the process.

Aristotle is talking about buying and selling for money. These have their own mathematical analogue.

make the re-back-giving according to analogue
poiei de tēn antidosin tēn kat analogian

according to through-the-middle together-yoked³⁹¹
hē kata diametron suzeuxis

Loeb: Now proportionate requital is effected by diagonal conjunction.

Oxford: Now proportionate return is secured by cross-conjunction.

Penguin: This process of give and take according to the right proportion is carried out by ‘diagonal conjunction’.

Notice that *antipoiein* has changed to *antidosin*. This leads all the translations to give up “reciprocity.” This is unfortunate, because it seems quite apt here. *Dosin* is from *didōmi*, “to give.” The Oxford translation, which one time earlier used “requital” as a translation of *antipoiein*, uses “return” for *antidosin* and the Loeb translation, which used “reciprocity” for *antipoiein*, uses “requital” for *antidosin*. The Penguins translation’s “give and take” is very good, but I think it should be “give-and-take and give-and-take” because *antidosin* is *two* business transactions, not one. It is buying

³⁹¹ Oxen are *zeuxis*.

and selling and selling and buying. I use “re-back-giving,” but I would accept “reciprocal exchanging.”

With the Oxford translation, I refuse the temptation of using “diagonal” as a translation for *diametrou*. Diagonal comes from *diagônios*, where *gônios* means “angle.”³⁹² *Diametrou* is either “through the middle” or “through-measure.” It is also important to notice that Aristotle is not talking about a single through-measure; he is talking about a criss-cross between two people and two things.

$$\begin{array}{ccc} \cdot & & \cdot \\ & \times & \\ \cdot & & \cdot \end{array}$$

The formula for distributing justice was:

$$\begin{array}{cc} 2 & 6 \\ = & \\ 3 & 9 \end{array}$$

$$\begin{array}{cc} \text{person} & \text{person} \\ = & \\ \text{thing} & \text{thing} \end{array}$$

The person was yoked to the thing by merit.

$$\begin{array}{cc} \text{person} & \text{person} \\ (\text{merit}) = & (\text{merit}) \\ \text{thing} & \text{thing} \end{array}$$

Now we are doing an analogue. The 2, which used to be yoked by merit with 3, is now yoked with 9; the 3 is yoked with 6. The sign is no longer =. It has become \$.

$$\begin{array}{cc} \text{person} \$ & \$ \text{person} \\ & \$ \\ \text{thing} \$ & \$ \text{thing} \end{array}$$

³⁹² *Diagônios* is a masculine word. A feminine word, *diagônia*, means struggle. They come from *agôn*, from which we get agony. An *agôn* is a contest, battle or struggle.

This is not justice. This is the market. In the market, money replaces merit as the link between people and things. Each person buys the other person's thing for money. We have already seen that it is hard to measure merit; with money there is no difficulty measuring, though it is not clear what we are measuring. Money is easy to measure, but it does not measure merit; Aristotle is very clear about that.

Money and merit are not the same *logos*. In the *logos* of merit, the analogue of money is *χάρις* (*cha' riss*), which means approximately, grace or charity. Merit is measured by *χάρις* and *χάρις* was the basis of the Greek economy before money was invented (or discovered) in about 750 B.C.³⁹³ Before money held people together, they were held together by *χάρις*. One unique thing about ancient Greece, one thing that sets it apart from all the western cultures that come after it, is that ancient Greece begins before money.

Rome, the first big culture after Greece, dated its own birth to just about the time money was born. Rome celebrated its own birth as occurring in 779 B.C. The Romans (and every Western person³⁹⁴ since Rome) lacked something the Greeks had: the cultural memory of a social life before money.³⁹⁵ This memory is recorded in the works of Homer, the *Iliad* and the *Odyssey*. These works were written down at about the time money first came into use. Since they reflect a time prior to money, they contain no mention of it. The *Iliad* opens with a scene in which a father is trying to ransom his captured daughter. He offers things, not money. The *Iliad* ends with another father offering ransom, this time for the body of a dead son. This father too offers things, not money. In the *Odyssey*, Odysseus returns to his home disguised as a beggar. One of the suitors for Penelope, Odysseus' wife, offers to "hire" Odysseus to

³⁹³ A. Carson, *The Economy of the Unlost*, (Princeton, 1999), p.1 says:

A coin is a flattened piece of metal of a standardized weight with a design imprinted on one or both sides to indicate what individual community issued it The first true coinage Herodotus tells us was a Lydian invention and so datable to about 700 B.C. ... Corinth and Athens began to strike coins of silver before 550 and by the end of the sixth century the use of coins was widespread throughout the Greek world.

³⁹⁴ We should say "every 'civilized' Western person." The natives in North America were like the Greeks. They had a society built on *χάρις*. When civilized Western people see such a society, they destroy it.

³⁹⁵ Not just without money; before money. This recalls Aristotle's point about "is not" meaning contrary things. See above p.

clear stones
 from wasteland for me – you’ll be paid enough –
 boundary walls and planting trees.
 I’d give you a bread ration every day,
 a cloak to wrap in, sandals for your feet.³⁹⁶

In *The Economy of the Unlost*, A. Carson looks at the difference between using money and not using it.

People who use money seem to form different relationships with one another and with objects than people who do not. Marx gave the name “alienation” to this difference. Marx believed that money makes the objects we use into alien things and makes the people with whom we exchange them into alien people.³⁹⁷

The transition from no-money to money worked a great change on the world. It did not happen overnight. It took centuries for money to take over from *χάρις* and in some ways, the takeover will never be complete. Some aspects of life may resist the inroads of money permanently: a child’s drawing, though worth nothing in money, can still be very precious.

You cannot eat money. You can, on the other hand, sell food. In fact you can sell anything. Marx called this fact “commodity form” and believed it to characterize the life of all objects in a money economy. “Selling is the practice of alienation,” he says, “and the commodity is its expression.” So expressed, commodities acquire a value estranged from their use and abstracted from their context of use.³⁹⁸

Commodity form is not a simple state of mind. It fragments and dehumanizes human beings. It causes a person to assume a “double character” wherein his natural properties are disjunct from his economic value, his private from his public self.

³⁹⁶ Book XVIII, line 358, R. Fitzgerald, trans. (Anchor, 1963)

³⁹⁷ A. Carson, *The Economy of the Unlost*, (Princeton, 1999), p. 17 Carson’s book has greatly influenced my thinking.

³⁹⁸ *Ibid.*, p. 24.

These are the terms in which Marx described the effect of commodification on citizens of bourgeois Europe.³⁹⁹

Unlike bourgeois Europe, Greek culture had a memory of an economy without money. This economy was built on *χάρις* and *ξένια* (k'senia), hospitality - gifts

Before there is money, many complex societies order their economic lives, to a significant extent, by means of gifts and gift exchange. Historians have shown how an ideology of aristocratic gift exchange, conspicuous throughout the Homeric poems and also well evidenced in archeological remains of the Homeric world, continued to inform the archaic and classical Greek societies of the eighth to the fourth centuries B.C., coexisting tenaciously with the spread of money and commodity exchange. Gift exchange forms part of what is called an “embedded economy,” that is, a socioeconomic system in which the elements of economic life are embedded in noneconomic institutions like kinship, marriage, hospitality, artistic patronage and ritual friendship. These function through a maze of social, religious and symbolic interactions whose core is the exchange of gifts.⁴⁰⁰

Unlike money

[a] gift has both economic and spiritual content, is personal and reciprocal, and depends on a relationship that endures over time. Money is an abstraction that passes one way and impersonally between people whose relationship stops with the transfer of cash.⁴⁰¹

[G]ift-giving is at once a mechanism of exchange that is at once material and moral and knits the community together in a living fabric of value.⁴⁰²

³⁹⁹ Ibid., p. 19.

⁴⁰⁰ p. 11-12

⁴⁰¹ p. 12

⁴⁰² Id.

[W]hereas money is concerned to change the status quo, gifts aim to sustain it. The profound conservatism of a gift economy secures its own continuance and moral prestige ... by derogation of all that is not gift. We can see a deep mistrust of money, trade, profit, commerce and commercial persons pervading Greek socioeconomic attitudes from Homer's time through Aristotle's.⁴⁰³

Aristotle does not talk about *ξένια* but he does talk about *χάρις*, which Carson says is

a key term on the gift-exchange economy of the archaic and classical periods, designating “a willing and precious reciprocal exchange” between men who knew a mutual and ritual dependence.⁴⁰⁴

When Carson says “the word *charis* is semantically reversible,” she means what I mean by integratedly contrary. The word *χάρις*

includes in its lexical equivalents favor, gift, goodwill given or received, payment, repayment, gratification, pleasure afforded or pleasure returned, charity, grace, Grace. In other words, *charis* is the generic name for the whole texture of exchanges that constitute a gift economy as well as for the piety that guarantees them.⁴⁰⁵

In her comments on money Carson mentions the *Nicomachean Ethics*, where she says “Aristotle inserts into his analysis of money ... a rather wistful passing salute to the goddesses called the *Charities*.” Here is Carson's translation of the passage in which Aristotle talks about *χάρις*.

That is why people build a temple to the *Charities* in a conspicuous place, so that there may be reciprocal giving. For this is the essence of *charis*: the necessity to repay a grace done to oneself and also to initiate gracious action on one's own.⁴⁰⁶

⁴⁰³ p. 13

⁴⁰⁴ p. 20

⁴⁰⁵ Id.

⁴⁰⁶ Id.

Money is an analogue of *χάρις*. Aristotle says this analogue is based on *χρεία* (*Ba chray' ah*). In this passage, this word is normally translated “demand.”

it must to one some all be measured as was said before
dei ara heni tini panta metreisthai hôsper elechthê proteron

this is on the one hand
touto d' esti tê men

truth the *chreia* the all together-has
alêtheia hê chreia hê panta synechei.

if none needs either not the same
ei gar mêthen deointo ê mê homoiôs

either not it will be othering or not the same
ê ouk estai allagê ê ouch hê autê

or on the other hand for-other the *xreias* the money
hoion d' hypallagma tês chreias to nomisma

come by together-put
gegone kata synthêkên,

and through this the name has money
kai dia touto tounoma echei nomisma

that not natural but by law it is
hoti ou physei alla nomô esti,

and by us to change and make *achrêston*
*kai eph hêmin metabalein kai poiêsai achrêston*⁴⁰⁷

Oxford: All goods must therefore be measured by some one thing, as we said before. Now this unit is in truth demand, which holds all things together (for if men did not need one

⁴⁰⁷ 1133a 26-32

another's goods at all, or did not need them equally, there would be no exchange, there would be either no exchange or not the same exchange); but money has become by convention a sort of representative of demand; and this is why it has the name 'money' (*nomisma*) – because it exists not by nature but by law (*nomos*) and it is in our power to change it and make it useless.

There are two things to notice in this passage: one has to do with the translation of *χρεία*. *Achrêston*, the last word in the passage, comes from *χρεία* and Ross translates it as “useless.” *χρεία* is normally translated as “of use” or “necessary.” To translate *χρεία* as “demand” imports a particular modern economic theory into what Aristotle says. The second point to notice in the passage is that Aristotle distinguishes between *φύσει* (*foo' say*), “by nature” and *νόμῳ* (*gnaw' mow*), “by law.” That Aristotle draws such a clear distinction here is one of the reasons we cannot say he is a “natural lawyer.” We will look at this point later when we get to *Ethics* V vii, where Aristotle says a great deal about the relation between *physis* and *nomos*.

On both sides of the passage in which Aristotle notices the similarity between the words *nomisma* and *nomos*, there is a good deal of mathematics. With this mathematics, *Ethics* purports to explain how the prices of homes, shoes, and food are determined. Of this explanation Joachim says:

How exactly the values of the producers are to be determined, and what the ratio between them can mean, is, I must confess, in the end unintelligible to me.⁴⁰⁸

I will not discuss the mathematics of this part of *Ethics* V, but several things Aristotle says in the midst of the mathematics are interesting.

from this the money was let loose
eph' ho to nomism' elêlythe

and becomes somehow middle all measures
kai ginetai pôs meson panta gar metrei

⁴⁰⁸ H.H. Joachim, *Aristotle, The Nicomachean Ethics, A Commentary* (Oxford, 1951) p. 150.

so that the over-extending and the left out
hôte kai tên hyperochên kai tên elleipsin,

how many shoes equal house or food
posa atta dê hypodêmat' ison oikia ê trophê⁴⁰⁹

Loeb: It is to meet this requirement that men have introduced money; money constitutes in a manner a middle term, for it is a measure of all things, and so of their superior or inferior value, that is to say how many shoes are equivalent to a house or to a given quantity of food.

In the world of merit, justice is people getting what they deserve; in the world of money, there is no justice; prices have to be set. The commodities and their producers have to be “equalized.” This setting of prices allows us to use money to make exchanges in a way we could not exchange commodities themselves.

as for the future otherings if now none needed
hyper de tês mellousês allagês, ei nun mêden deitai,

that it is if needed the money as near us
hoti estai ean deêthê, to nomisma hoion enguêtês esth' hêmin

must this bringing to be to take
dei gar touto pheronti einai labein⁴¹⁰

Oxford: And for the future exchange – that if we do not need a thing we shall have it if ever we do need it – money is as it were our surety; for it must be possible for us to get what we want by bringing the money.

Loeb: Now money serves as a guarantee of exchange in the future: supposing we need nothing at the moment, it ensures that exchange shall be possible when a need arises, for it meets

⁴⁰⁹ V.v, 1133a 20-23.

⁴¹⁰ V.v, 1133b 11-13.

the requirement of something we can produce in payment so as to obtain the thing we need.

happens to on the one hand this the same
paschei men oun kai touto to auto

not always equal power
ou gar aei ison dynatai

the same on the other hand wants to stay rather
*homôs de bouletai menein mallon*⁴¹¹

Loeb: Money, it is true, is liable to the same fluctuation of demand as other commodities, for its purchasing power varies at different times; but it tends to be comparatively constant.

Oxford: Now the same thing happens to money itself as to goods – it is not always worth the same; yet it tends to be steadier.

on the one hand to truth not possible
tê men oun alêtheia adynaton

so different together-measure become
ta tosouton diapheronta symmetra genesthai

toward on the other hand the *chreian* possible enough
*pros de tèn chreian endechetai hikanôs*⁴¹²

Oxford: Now in truth it is impossible that things differing so much should become commensurate, but with reference to demand they may become so sufficiently.

Loeb: Though therefore it is impossible for things so different to become commensurable in the strict sense, our demand furnishes a sufficiently accurate measure for practical purposes.

⁴¹¹ V.v, 1133b 13-15.

⁴¹² V.v, 1133b 19-21.

Several times in his works Aristotle notices that the sides of a square and the cross-measures are “incommensurable,” *asymmetrou*. Just as Aristotle thought $\frac{1}{2}$ expressed something natural, so he thought incommensurability expressed the contrary. If the sides of a square can be said to be some number of units, (“10 feet,” “3 meters,” “22 inches” or “6 miles,” it doesn’t matter what the units are) the through-measures cannot be expressed in any exact number of the same units. The diameters of a square with sides 10 somethings long must be said to be $10\sqrt{2}$ long. This is not an exact number. The lengths of the sides of a square and the lengths of the cross-measures cannot be measured in the same *logos*.⁴¹³ Even money cannot overcome this problem. We use money, but only by ignoring the obvious fact that it does not measure what it purports to measure, value, merit or desert. The demand theory explains that money measures demand; but what is demand other than what money measures?

*

One final bit of mathematics is inserted in *Ethics* V v. With this mathematics, in which he actually speaks of “ten minae” or pieces of silver, Aristotle indicates how the prices of houses and beds are determined. I will not retranslate these comments on money but I do want to look at two footnotes that the Oxford translation has, explaining the mathematics in them. The first says:

The working of ‘proportionate reciprocity’ is not very clearly described by Aristotle, but it seems to be as follows. A and B are workers in different trades, and will normally be of different degrees of ‘worth’. Their products, therefore, will also have unequal worth, i.e. (though Aristotle does not expressly reduce the equation to one of time) if $A=nB$, C (what A makes in an hour) will be worth n times as much as D (what B makes in an hour). A fair exchange will then take place if A gets nD and B gets 1 C; i.e. if A gives what it takes him an hour to make, in exchange for what it takes B n hours to make.

All on their own, Aristotle’s comments in *Ethics* are too mathematical; this explanation is grossly overmathematized. Shoemakers and builders exchanged what they made long before Aristotle explained how

⁴¹³ *Metaphysics*, X. i, 1053a 17.

they did it. For hundreds of years, they exchanged things without money and they had set money prices for hundreds of years before Aristotle ever explained how they do it. Using money made it possible to exchange things on a wider scale. Aristotle says “It is to that end that money was introduced.” Each vendor names a price, each buyer either accepts that price or names another, and then a deal is struck. That this occurs all the time is obvious. Exactly how it works is not clear, even now. The elaborate “science” called economics, does not explain it and Aristotle’s mathematics does not explain it either.

The Oxford translation’s second footnote about the naming of prices begins:

Aristotle’s meaning, which has caused much difficulty, seems to be explained by reference to IX.1.

Ethics IX is about friendship. In it, Aristotle speaks of the kind of friendship based on a mutual exchange and his comments slide into being about money. They have a great deal to do with law but I will not retranslate them because they seem inflated to me. Here is the Oxford translation:

If the gift was not of this sort, but was made with a view to a return, it is no doubt preferable that the return should be one that seems fair to both parties, but if this cannot be achieved, it would seem not only necessary that the person who gets the first service should fix the reward, but also just; for if the other gets in return the equivalent of the advantage the beneficiary has received, or the price he would have paid for the pleasure, he will have got what is fair as from the other.

We see this happening too with things put up for sale, and in some places there are laws providing that no actions shall arise out of voluntary contracts, on the assumption that one should settle with a person to whom one has given credit, in the spirit in which one bargained with him. The law holds that it is more just that the person to whom credit was given should fix the terms than that the person who gave credit should do so. For most things are not assessed at the same value by those who have them and those who want them; each class values highly what is its own and what it is offering; yet the return is made on

the terms fixed by the receiver. But no doubt the receiver should assess a thing not at what it seems worth when he has it, but at what he assessed it at before he had it.

If we think *Ethics* was written to “guide and improve life,” we can think of this comment as proposing a rule for business deals: all prices to be set before deals are made.

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Ethics V vi contains no mathematics, but it does have two comments about law. The first is,

it is justice to which law toward them
esti gar dikaion hois kai nomos pros autous,

law in which injustice
*nomos d' en hois adikia*⁴¹⁴

Oxford: For justice exists only between men whose mutual relations are governed by law; and law only exists for men between whom there is injustice.

Loeb: For justice can only exist between those whose mutual relations are regulated by law, and law only exists among those between whom there is a possibility of injustice

Penguin: The reason is that justice can only exist among those whose relations to one another are governed by law and law exists only among those who may be guilty of injustice.

The second thing Aristotle says about law in V vi is that since people “extra for themselves keep”

so not we let to rule a human but the law
*dio ouk eômen archein anthrôpon, alla ton nomon*⁴¹⁵

⁴¹⁴ V. vi, 1134a 30-31.

⁴¹⁵ V. vi, 1134b 35-36.

Loeb: This is why we do not permit a man to rule, but the law

The Oxford translation takes *nomon* for *logon* and translates Aristotle's comment:

This is why we do not allow a *man* to rule, but *rational principle*. (italics in the original)

Another scholar says he approves of *logon*, but translates the line as if it had both *nomon* and *logon*:

Therefore we do not allow a man, but the written law (or the rule) to govern.⁴¹⁶

As we will see, Aristotle has a great deal more to say about the rule of men and the rule of law in *Politics*.

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In *Ethics* V vii, Aristotle says in a *polis* justice

on the one hand natural it is on the other hand legal
*to men physikon esti to de nomikon*⁴¹⁷

The Loeb translation, which translates *nomon* as “the law” in V vi, translates *nomikon* in V vii as “conventional.” “Political Justice is of two kinds, one natural, the other conventional.” The Oxford translation has “Of political justice part is natural, part legal.”

The Greek word νόμος means both “law” and “convention.” It is law as custom and custom as law. The word *nomos* is related to the verb *nemô*, which is associated with agricultural production and refers to the distribution or apportioning of food, and the sources for acquiring food.⁴¹⁸ As *nomeus*, this word goes back to “an allotted grazing land” and the “shepherd” who supervised the grazing on such lands. From the chain of *nemô*, *nomeus*, *nomos*, we see that the customary distribution of food and the sources of its

⁴¹⁶ H.H. Joachim, *Aristotle, The Nicomachean Ethics, A Commentary* (Oxford, 1951) p. 154.

⁴¹⁷ V. vii, 1134b 19.

⁴¹⁸ The *nomos* that is law and the *nomos* that is agricultural production have different accents; as a result, some would not accept them as the same word. Ostwald notes that the two terms share a common root. M. Ostwald, *Nomos and the Beginnings of the Athenian Democracy* (Oxford, 1969) p. 10.

production, *χάρις*, turns into the law.⁴¹⁹ The notional list of who is entitled to what amount of food is the first law. Aristotle does not explicitly tie law and the arrangements for food distribution together, but he was aware that *nomos* and food distribution were related linguistically and food is central to his discussion of the *polis*. At one point in *Politics* he even says, “Food is the first thing a *polis* must provide.”⁴²⁰

Nomoi are laws in the sense that they are practices that become norms. *Nomos* stands between the facts that give rise to a norm and the norm that the facts give rise to. We will come back to the word *nomos* when we look at what Aristotle says about law in *Politics*. Here we must examine the long passage that makes up most of *Ethics* V vii. In it Aristotle says a great many things about the difference between what is *physikon*, “natural,” and what is “*nomikon*,” legal. Like so much of *Ethics*, V vii seems to say a lot, but winds up saying not very much at all.

Here is the Oxford translation of the first part of the passage:

Of political justice part is natural, part legal, – natural, that which everywhere has the same force and does not exist by people’s thinking this or that; legal that which is originally indifferent, but when it has been laid down is not indifferent, e.g. that a prisoner’s ransom shall be a mina, or that a goat and not two sheep shall be sacrificed, and again all the laws that are passed for particular cases, e.g. that sacrifices shall be made in honor of Brasidas, and the provisions of decrees.

On the one hand Aristotle is saying there is natural law, on the other hand he is saying law is not natural. He says there is natural justice and legal justice, so nature and law are different. But then he slips in a comment that seems to go the other way: In the Oxford translation, “legal that which is originally indifferent, but when it has been laid down is not indifferent.” To say it is not indifferent, is like saying it has become natural. It is almost as if Aristotle were saying that once the rule *a goat and not two sheep shall be sacrificed* is put in place as a law, it becomes natural. We might recall the circles that represent the area of law which it is illegal but not unjust to

⁴¹⁹ An interesting analogy is the way *Domesday Book*, the list the conquering Normans required the Saxons to compile of who owned what land and animals, became the basis for all subsequent English law.

⁴²⁰ VII. viii, 1328b 6-7.

break; the area in which something is against the law but no one is being treated unfairly, no one is not being given what they deserve. Perhaps the difference between the sizes of the circles is bigger than I thought.

Before we move on in this passage, I want to point out something about the Oxford translation's use of "indifferent" to translate *diapherei*. *Diapherei* means "differing."

legal on the other hand that which from the beginning
nomikon de *ho* *ex archês*

on the one hand not differing this or other
men *outhen diapherei houtôs ê allôs*

whenever on the other hand placed is different
hotan de *thôntai diapherei*⁴²¹

The Loeb translation is just like the Oxford:

A rule is conventional that in the first instance may be settled in one way or the other indifferently, though having once been settled it is not indifferent.

The Oxford and the Loeb translations use "indifferent" as one might use "inflammable," to mean "flammable." A matter of indifference is a matter where the difference makes no difference. "Not indifferent" means the difference does make a difference. Aristotle says that in natural justice, there is a "correct" result, but in legal justice, from the beginning one law is no different from another. Any law could be made: one sheep, two sheep, three sheep. It does not make a difference. For the Oxford and Loeb translations, it is a matter of "indifference." But as soon as a certain law has been put into place, it is the law and the other potential laws are not the law. There is a difference between them. For the Oxford and Loeb translations, they are "not indifferent." That the Oxford and Loeb translations are translating backward is shown by the placement of "not" in both translations. In both it comes in the *de* clause. In the Greek, it comes in the *men* clause.

⁴²¹ V. vii, 1134b 20-22.

The Penguin translation is completely different. I present it without comment.

It is conventional when there is no original reason why it should take one form rather than another and the rule it imposes is reached by agreement, after which it holds good.

The Oxford translation of *Ethics* V vii continues

Now some think that all justice is of this sort, because that which is by nature is unchangeable and has everywhere the same force (as fire burns both here and in Persia), while they see changes in the things recognized as just. This, however, is not true in this unqualified way, but is true in a sense;

(I interrupt to point out that *alêthês*, “true,” does not occur even once in the Greek, though it is about to occur for a third time in this translation.)

or rather, with the gods it is perhaps not true at all, while with us there is something that is just even by nature, yet all of it is changeable; but still some is by nature and some not by nature.

So natural justice can change. And what can change is both by nature and not by nature. But fire has always burned here and in Persia and always will. So the justice that is natural and the nature that is natural are different. How the contrariness that is “law” fits in with the contrariness that is “nature” is anyone’s guess, though Aristotle tells us, in the Oxford translation:

it is evident which sort of thing, among things capable of being otherwise, is by nature; and which is not but is legal and conventional, assuming that both are equally changeable.

The Loeb translation has:

and it is easy^a to see which rules of justice, though not absolute, are natural, and which are not natural but legal and conventional, both sorts alike being variable.

a. Perhaps Aristotle wrote ‘though it is not easy.’

The Loeb translation's footnote indicates that the passage, as it now stands, makes no sense. That is exactly what I think. I have no idea what Aristotle is saying in *Ethics* V vii, except that the relationship between *physis* and *nomos* is complicated and difficult to understand. We will come back to the relationship between *physis* and *nomos* when we look at what Aristotle says about law in *Politics*; nothing he says there makes this relationship any easier to understand.

By the way, the Loeb translation uses "legal" here as a translation of *nomikon*, which it earlier translated as "conventional." Thus, the Loeb and the Oxford translations both translate *nomikon kai synthêke* as "legal and conventional." *Synthêke*, "together-placed," becomes our "synthetic" (as opposed to "natural"). Things that are natural come as they are; things that are *synthêke* are placed together by people.

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Ethics V viii does not mention law but it returns to legal themes. It goes back to what is said in V iii about praise and blame, except in V viii, Aristotle does not talk about praise and blame, only blame. He repeats much of what he said earlier about with-will, without-will, violence and not-knowing. Aristotle says some very interesting things in V viii but overall, I find his comments pedantic. For instance, he starts V viii

so that it will be some *adikon* on the one hand
hôt' estai ti adikon men

adikêma on the other hand not
adikêma d' oupô ⁴²²

Oxford: so that there will be things that are unjust but not yet acts of injustice.

Loeb: so that is possible for an act to be unjust without being an act of injustice.

This is about *aretê* and the *hexis* of being unjust. Doing unjust things and being an unjust person are not the same. I find this tiring and will not

⁴²² V. viii, 1135a 22-23.

retranslate any more of it. I will also pass over V ix, where Aristotle talks about whether people can be unjust to themselves.

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In *Ethics* V x, Aristotle talks about *epieikes*, making uncomfortable legal results fit. His comments begin with the observation that *epieikes* seems to be both the same thing as justice and different from justice. He reaches the same conclusion English law reached in the 17th century, in virtually the same terms: *kreitton to epieikes*,⁴²³ “stronger *epieikes*.”

Aristotle continues in language that explains the relationship between law and *epieikes*.

makes the problem
*poiei de tēn aporian*⁴²⁴

that *epieikes* justice on the one hand is
hoti to epieikes dikaion men estin

not according to law on the other hand
ou to kata nomon de

but restraightening of legal justice
*all' epanorthōma nomimou dikaiou*⁴²⁵

Aristotle uses *epanorthōma*, restraightening, not *diorthōma*, straightening. I do not know whether there is any significance to this. In any case, he explains why this restraightening is necessary.

cause that on the one hand law by-whole all
aition d' oti ho men nomos katholou pas

about some on the other hand not
peri eniōn d' ouch

⁴²³ V. x, 1137b 11

⁴²⁴ *Aporia* means “without a passage through.”

⁴²⁵ V. x, 1137b 12

which straight to speak by-whole
*hoion te orthôs eipein katholou*⁴²⁶

Oxford: The reason is that all law is universal but about some things it is not possible to make a universal statement which shall be correct.

*en hois oun anankê men eipein katholou mê hoion te de orthôs to hôs epi to pleon lambanei ho nomos ouk agnoôn to hamartanomenon kai estin ouden hêtton orthos to gar hamartêma ouk en tô nomô oud' en tô nomothetê all' en tê physei tou pragmatos estin euthys gar toiautê hê tôn praktôn hylê estin. hotan oun legê men ho nomos katholou symbê d' epi toutou para to katholou tote orthôs echei hê paraleipei ho nomothetês kai hêmarten haplôs eipôn epanorthoun to elleiphthen ho kan ho nomothetês autos houtôs an eipoi ekei parôn, kai ei êdei enomothetêsen an*⁴²⁷

(in which necessary on the one hand to speak by-whole, not that on the other hand straight what is for the most takes the law, not without knowledge the missing the mark, and it is not less straight because the mistake not in the law nor in the lawmakers but in the nature of the business it is. Immediately this the business is. When is said on the one hand law by-whole, and it happens on the other hand what is against the by-whole, then straight it is what left by the lawmakers and missed the mark simply, restraightening what has been left, as would the lawmaker himself would say being present, and knowing made the law would have.)

Oxford: In those cases, then, in which it is necessary to speak universally, but not possible to do so correctly, the law takes the usual case, though it is not ignorant of the possibility of error. And it is none the less correct; for the error is not in the law nor in the legislator but in the nature of the thing, since the matter of practical affairs is of this kind from the start. When the law speaks universally, then, and a case arises on it which is not

⁴²⁶ V. x, 1137b 13

⁴²⁷ 1137b 15-24

covered by the universal statement, then it is right, where the legislator fails us and has erred by over-simplicity, to correct the omission, to say what the legislator himself would have said had he been present and would have put into his law if he had known.

In this account of *epieikes*, it sounds a little like straightening justice. Straightening justice works where people's with-otherings have gotten them out of the straightness fashioned by distributing justice. In V x, Aristotle says *epieikes* works where the law has mandated a result that is not straight.

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One final thing Aristotle says in *Ethics* V x calls for some comment. It is about *psêphismata*, votes of the assembly.

this cause the not all according to law to be
touto gar aition kai tou mê panta kata nomon einai

that about some impossible to put law
hoti peri eniôn adynaton thesthai nomon,

so vote of the assembly must
hôte psêphismatos dei

the unhorizoned unhorizoned and the rule is
tou gar aoristou aoristos kai ho kanôn estin

like the Lesbian homebuilders the molybdenum rule
hôsper kai tês Lesbias oikodomês ho molibdinos kanôn

toward the form of the rock over-moves and not hold the rule
pros gar to schêma tou lithou metakineitai kai ou menei ho kanôn

votes of the assembly toward the business
kai to psêphisma pros ta pragmata ⁴²⁸

⁴²⁸ 1137b 28-32

Where the law cannot govern, a *psêphisma*, *p'say fizz' ma*, a vote of the assembly, must decide matters. Aristotle's comments make *psêphismata* sound a lot like a form of *epieikes*, which, as we have seen, is stronger than justice. In *Politics*, as we shall see in Chapter V, Aristotle expresses a contrary view about *psêphismata*.

Chapter V
Retranslating what Aristotle says about law in *Politics*

Aristotle's most interesting comments on law are in *Politics*. These comments are scattered throughout *Politics* as asides to other things. There is no arrangement to them. Many of them consist of only a few words, some are a bit longer and there is one long string of comments on the rule of law and the rule of men that comes up as an aside in Aristotle's notes on kingship. We will look at what Aristotle says about the rule of law and the rule of men at the end of this chapter, but I will start by retranslating some of the shortest things Aristotle says about law in *Politics*.

In *Politics* VII, Aristotle says

νόμος τάξις τις ἐστὶ⁴²⁹

law arrangement some is
nomos taxis tis esti (Pronounced just as it looks.)

Law is some sort of arrangement. This is a striking observation of a very obvious fact and characteristically, Aristotle says it very simply.

this clear and by the the words trust
touto de dêlon kai dia tês tôn logôn pisteôs

the for law arrangement some is
ho te gar nomos taxis tis esti

and the well-lawed necessarily well-arranged to be
kai tēn eunomian anankaion eutaxian einai

The Loeb translation has:

The evidence of theory proves the same point. Law is a form of order; and good law must necessarily mean good order.⁴³⁰

⁴²⁹ VII.iv., 1326a 30.

⁴³⁰ H. Rackham, *Aristotle, Politics* (Harvard, Loeb, 1932)

The Penguin translation has:

The language itself makes this certain. For law is a kind of order and to live under good law is to live in good order.⁴³¹

The Princeton translation has:

We may argue on grounds of reason and the same result will follow. For law is order and good law is good order.⁴³²

Notice how these translations are all careful to repeat the two εὖs – “good,” “good” – something as we have seen, that translations do not do when εὖ is used three times in connection with εὐδαιμονία.⁴³³ Even here, the two εὖs are not repeated by the Oxford translation. It has

But the point can also be established on the evidence of the words themselves. Law [*nomos*] is a system of order [*taxis*] and good government [*eu-nom-ia*] must therefore involve a general system of orderliness [*eu-taxia*].⁴³⁴

Here εὖ means “a general system.”

Notice also the varying treatment of λόγος in the four translations, “theory,” “language,” “reason” and “words.” As I have said, I prefer “language” and “words” to “theory” and “reason.” We will return to the inconsistent translation of λόγος later in the chapter. Here, by contrast, I want to look at the consistent translation of τάξις as “order.” A τάξις is the way an army is arranged on parade. In the face of the consistent translation “order,” it is a little daunting to retranslate τάξις as “arrangement,” but in Book III, Aristotle repeats his comment about τάξις and the translations there are not consistent.

In Book III, Aristotle says

⁴³¹ T.A. Sinclair, *Aristotle, Politics* (Penguin, 1962)

⁴³² B. Jowett, *The Complete Works of Aristotle: The Revised Oxford Translation*, J. Barnes ed. (Princeton Univ. Press, 1984) The date of the translation is not given..

⁴³³ Chapter I, p.5-6. .

⁴³⁴ E. Barker and R. F. Stalley *Aristotle, Politics* (Oxford, Barker, 1946, revised Stalley, 1995)

this already law for arrangement law
touto d' hêdê nomos hê gar taxis *nomos*⁴³⁵

The Loeb translates this line as

And this constitutes law for regulation is law.

The Loeb translation has changed its translation of *τάξις* from “order” to “regulation.” The Oxford translation has

But when we come to that we already come to law, for such an arrangement is law.

The Oxford translation has changed its translation of *τάξις* from “order” to “arrangement,” but it uses “*such an* arrangement.” I think “such a” modifies “arrangement” improperly. It makes *τάξις* into a *particular* arrangement. Aristotle says law is arrangement, or as the Loeb translation has it “regulation,” and while Aristotle’s comment does arise out of a particular arrangement – who gets to rule after a king dies – he does not explain what “sort” of arrangement that is.

Like the Oxford translation, the Penguin translation switches from “order” to “arrangement” and it too puts in a modifier: “*this* arrangement.”

So we are back again with law, for this arrangement for taking turns is law.

The Penguin translation goes even further and explains what “sort” of arrangement Aristotle means. It is an arrangement “for taking turns.” As I said before, it is not just this arrangement that is law. Arrangement is law.

The Princeton translation has

⁴³⁵ III. xvi., 1287a 18. Rackham has this in III. xi.; the other three translators I mention have it in III. xvi. Rackham’s text follows the same order as the others, but he numbers the chapters differently. His book III has only 12 chapters; everyone else’s has 18. I will not use Rakham’s numbering of the chapters in Book III.

We thus arrive at law for an order of succession implies law.

Unlike the other translations, the Princeton translation keeps “order” as its translation of *τάξις*, but it too modifies what was general before. An “order of succession” is a very particular sort of order. It is not “order” in general. Most of Aristotle’s work is about how one defines particular “sorts” of things.

An arrangement about who will rule when the king dies is an arrangement about succession or taking turns, but more deeply it is an arrangement about sovereignty. This may seem a small point, but it is the same point Aristotle makes in *Posterior Analytics*,⁴³⁶ when he says, we can say the angles of “an isosceles triangle are equal to two right angles,” but that misstates our knowledge. The angles of all triangles are equal to two right angles. All arrangement regarding sovereignty is law.

Indeed, Aristotle says “arrangement is law,”⁴³⁷ but since Aristotle always says things are so on the one hand and not so on the other hand, we should say on the one hand all arrangement is law and on the other hand some arrangement is not law. The two Greek words *τάξις* and *νόμος* are combined in the English word “taxonomy,” which the OED defines as

classification especially in relation to its general laws or principles, that department of science or of a particular science or subject which consists in or relates to classification

A taxonomy is an arrangement according to a principle or general rule, embodying an understanding of some aspect of reality. The periodic table of the elements is a taxonomy. The Linnaean arrangement of the plants is also a taxonomy. The alphabet is not a taxonomy. It is an arrangement, but it reflects no underlying understanding of anything.

All law is taxonomy. The way codes, statutes, and case law work is by establishing an arrangement or ordering of contraries – legal categories. All law is categorical arrangement with practical consequences for governance⁴³⁸ and it is tempting to say that the underlying principle behind

⁴³⁶ I.iv-v., 73b 37, 74a 17, 74b 1.

⁴³⁷ Some comments on *taxis* that clearly have nothing to do with any particular *taxis* can be found at *Metaphysics* XII.x, 1075a 12.

⁴³⁸ The table of the elements could be called “law” in a metaphorical sense, but, properly speaking, it is not law because it has no practical consequences. The Library of Congress classification system is a

the taxonomies that are law is justice. Sometimes Aristotle says this. For instance, he says

not lawful not only justly but unjustly to rule
*ou nomimon de to mê monon dikaiôs alla kai adikôs arxein*⁴³⁹

Oxford: It is unlawful to rule without regard to the justice or injustice of what you are doing.

Loeb: government is not lawful when it is carried on not only justly but also unjustly ...

Law that is not just is not law.⁴⁴⁰ This comment takes us back to a theme we have looked at several times – natural law. Aristotle says there is a standard outside law for what is law. He says this standard is justice. Aquinas says the same thing but he calls the standard “natural law.”

Every law laid down by men has the force of law in that it flows from natural law. If on any head it is at variance with natural law, it will not be law, but spoilt law.⁴⁴¹

Blackstone identifies “natural law” with “the laws of eternal justice” and says “no human laws are of any validity, if contrary to this.”⁴⁴²

Aristotle’s inclination to natural law can be seen in another short comment he makes in *Politics*.

and the law a contract
kai ho nomos synthêkê

taxonomy with practical consequences: it causes certain books to be shelved on the second floor of the library and others to be shelved on the third floor. These consequences, however, have nothing to do with governance. In *Governmentality*, Foucault argues that medicine, education, and many other things that we would not ordinarily take to be government are aspects of governmentality. G. Burchell, C. Gordon, and P. Mills (eds.) *The Foucault Effect* (U. of Chicago, 1991) p. 87-104. I suppose he might include the physical arrangements for finding and using books in a library.

⁴³⁹ VII.ii., 1324b 27-28.

⁴⁴⁰ S. Rolland has suggested to me that this line could and perhaps should be read to say, “It is not lawful to rule not only justly but also unjustly.” This reading makes Aristotle a natural lawyer of a special sort. It makes him a natural lawyer who thinks the nature of law is bad. I explore this idea later in this chapter, at p. 206.

⁴⁴¹ *Summa Theologiae*, Question 95, article 2.

⁴⁴² *Commentaries on the Laws of England*, Introduction, section.

as says Lycophron the sophist
kai kathaper ephê Lykophron ho sophistês

guaranteeing to each other the justice
engyêtês allêlois tôn dikaiôn

but not so as to make good and just the citizens
*all ouch hoios poiein agathous kai dikaious tous politas*⁴⁴³

Oxford: Otherwise, too law becomes a mere covenant – or (in the phrase of the sophist Lycophron) ‘a guarantor of just claims’ – but lacks the capacity to make the citizens good or just.

To think of law as having “the capacity to make citizens good or just” makes Aristotle into something even more than a natural lawyer, but characteristically, he takes it back at once, indeed, he takes it back even before he says it. Immediately before he says it is not lawful to rule unjustly, Aristotle poses the question, which is more desirable, the politically involved life or the life free from politics? From the question of whether one person should try to exercise power over others, he drifts into the question of whether one *polis* should try to exercise power over other *polisses*, and says

most laws abundantly
tôn pleistôn nomimôn chydên

as to speak of being laid down by most
hôs eipein keimenôn para tois plaistois

still if somewhere someone toward one the laws see
homôs ei pou tis pros hen oi nomoi blepousi

the power aim all
*tou kratein stochazontai pantes*⁴⁴⁴

⁴⁴³ III.ix. 1280b 11-13. (Rackham has this as III.v.)

⁴⁴⁴ VII.ii., 1324b 5-7.

Oxford: although in most cities most of the laws are only a heap of legislation, where they are directed, in any degree to a single object, that object is always conquest.

Loeb: even though with most peoples most of the legal ordinances have been laid down virtually at random, nevertheless if there are places where the laws aim at one definite object, that object is in all cases power ...

This does not sound at all like a natural lawyer – or rather, it sounds exactly like a natural lawyer but one who thinks the nature of law is bad. It is reminiscent of S. Rolland’s translation of 1324b 27-28 pointed out earlier: “It is not lawful to rule not only justly but also unjustly.” One consistent feature of what we call “natural law” is the assertion or assumption that the nature of law is good, but Aristotle says, “the opposite of good appears to be in nature, not only arrangement and beauty, but disarrangement (*ataxia*) and shame.”⁴⁴⁵

On the one hand Aristotle thinks positively about the nature of law, on the other hand he sounds like someone who is totally cynical about law and after remarking that some peoples have laws that encourage military prowess, Aristotle lists a variety of practices that work in that way. He then says these practices

on the one hand by law laid down
ta men nomois kateilêmmena

on the other hand by culture
*ta de ethesin*⁴⁴⁶

Loeb: some established by law and others by custom.

Oxford: some of them sanctioned by laws and some of them matters of custom.

For Aristotle to casually distinguish in this way between law and custom runs strongly against the idea that law is natural. The Greek word

⁴⁴⁵ *Metaphysics*, I.iv, 984b 33-985a 2. He even adds, “there is more bad than good, more fouled up than beautiful.”

⁴⁴⁶ VII.ii., 1324b 23.

for natural, *φύσις*, *physis*, (*fee' sis*) means “growing.” Aristotle uses *φύσις* mostly to mean the thing that things have that makes them what they are, the thing that makes them grow into themselves. If law is natural, custom certainly is because if law grows naturally, it grows through custom.

On the one hand Aristotle does not sound like a natural lawyer, on the other hand he does. This is one contrarity. A second is that when Aristotle speaks like a natural lawyer, on the one hand he makes the nature of law good – the law’s purpose is not just to do justice but to make the citizens good and just. On the other hand he makes the purpose of law – its *τέλος* or end – quite base – whenever law is organized, it is for conquest.

In Book VI, there is a moderately long passage in which Aristotle says

but about the equal and the just
alla peri men tou isou kai tou dikaiou

would be all together difficult to find the truth about them
k'an ê pany xalepon heurein tèn alêtheian peri autôn

however much easy to chance than with-persuade
homôs rhaon tychein ê sympeisai

the potential to extra-take
tous dynamenous pleonektein

always seek the equal and the just the weak
aei gar zêtousi to ison kai to dikaion hoi hêttaus

the powerful never think
*oi de kratountes ouden phrontizousin*⁴⁴⁷

Loeb: But on questions of equality and justice, even though it is very difficult to discover the truth about them, nevertheless it is easier to hit upon it than to persuade people that have the power to get an advantage to agree to it; equality and justice are always sought by the weaker party, but those that have the upper hand pay no attention to them.

⁴⁴⁷ VI.iii., 1318b 2-5. (Rackham: VI.i.)

Oxford: To find where the truth lies in these matters of equality and justice is a very difficult task. Nevertheless it is an easier task than that of persuading men to act justly, if they have power enough to secure their own selfish interests. The weaker are always anxious for equality and justice. The strong pay no heed to either.

Princeton: But, although it is difficult in theory to know what is just and equal, the practical difficulty of inducing those to forbear who can, if they like, encroach is far greater, for the weaker are always asking for equality and justice, but the stronger care for none of these things.

Penguin: And however difficult it may be to find out the truth about equality and justice, yet it is easier than to get men's agreement when you are trying to persuade them to forgo some profit that lies within their grasp. It is always the weaker who go in search of justice and equality, the strong reck nothing of them.

These translations are all on the one hand the same, on the other hand they are all quite different and notice that the Princeton translation reverses the first "equal and just," while the Penguin translation reverses the second. In all of them, Aristotle's observations seem to be about what is "natural" in law, but what is "natural" in law sounds bad, rather than good. His observations put me in mind of the Gauls' response when the Romans asked them why they were attacking Clusium, a peaceful Tuscan city. They said they were doing it for the same reason the Romans attacked people; they were following

that most ancient of all laws which gives the possessions of the feeble to the strong; which begins with God and ends in the beasts; since all these, by nature, seek the stronger to have advantage over the weaker.⁴⁴⁸

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⁴⁴⁸ Plutarch, *Lives of the Noble Grecians and Romans*, J. Dryden translation, revised by A.H. Clough, 1864 (Modern Library) p. 164.

Another short but very interesting thing Aristotle says about law in *Politics* is that in a certain kind of democracy,

ruling to be the crowd and not the law
*kyrion d' einai to plêthos kai mê ton nomon*⁴⁴⁹

Aristotle is talking here about mob rule. This was a continual threat in Athens during the years he was writing *Politics*, 350-325 BC.⁴⁵⁰ He continues

this happens whenever
touto de ginetai hotan

the ψηφίσματα ruling are but not the νόμος
*ta psêphismata kypia ê alla mê ho nomos*⁴⁵¹

In *Ethics*, Aristotle says ψηφίσματα are used like επιεικές, to deal with what νόμος cannot deal with. The idea that decrees and “equity” are similar is on the one hand quite surprising, on the other hand quite obvious. One the one hand, ψηφίσματα are good, on the other hand ψηφίσματα are bad. But notice that ψηφίσματα and νόμος mean the same thing. They both mean “law.” ψηφίσματα and νόμος express a dimension of the contrariness that is “law.” ψηφίσματα actually means “laws.” The singular is ψηφίσμα. There is a plural of νόμος, νόμοι. It is quite common and like ψηφίσματα means “laws.” But while νόμος can mean “a law” or “law,” ψηφίσμα can only mean “a law.” To follow this contrariness further, notice

⁴⁴⁹ *Politics*, IV. iv. 1292a 4-5. In this passage Aristotle does not use the word *dêmos* or the word *kratos*. He says “the *pleithos* [the mass, the majority, the crowd] is *kyrios* [ruling].” I treat the passage as though it were about democracy rather than *pleithokuriosity*. Cf. 1291b 31 to 1292b 10.

⁴⁵⁰ M. Hansen has counseled against “the erroneous assumption that Aristotle was always thinking of Athens when writing about radical democracy.” *The Sovereignty of the People’s Court in the Fourth Century BC* (Odense: University of Odense Press, 1974), p. 14. In this context Hansen believes it is important to contrast Aristotle’s general discussion of democracy in *Politics* with the comments he makes about Athens in *The Constitution of Athens* and in the few passages in *Politics* that specifically refer to this *polis*. This caution is virtually impossible to heed. The Athenians, and every one else at the time, thought of Athens as the most democratic of the democracies. It would have been hard to think about democracy and not think of Athens. Even if we restrain ourselves and do not take Aristotle “always” to be thinking about Athens when he speaks of radical democracy, it seems almost certain that when he speaks about *nomos* and *psêphismata*, he is thinking of Athens.

⁴⁵¹ IV. iv, 1292a 4-6.

that both *ψηφίσματα* and *νόμος* could mean “the law” but only *νόμος* could mean The Law.

A *ψηφίσμα* is a law enacted by a majority vote. A *νόμος* can be enacted by a vote, but many *νόμοι* are not and *νόμος* is not. That is Aristotle’s point.⁴⁵² The relationship between *nomos* and *psêphismata* – law and the laws enacted by majority vote – was an important focus of Athenian legal attention almost continuously from about 410 until the end of Athenian democracy in 322. One might almost call it *the* question of the fourth century. The question is this. In a democracy, the *δήμος*, *day’ moss*, “the people” is supposed to have the *κράτος*, *cro’ toss*, “the power.” One manifestation of democracy, one place where the *kratos* of the *dêmos* makes itself felt is the *ekklêsia*, or assembly. Indeed, “the terms *dêmos* and *ekklêsia* are often used synonymously.”⁴⁵³ Aristotle’s comment about *psêphismata* and *nomos* suggests that there are limits on the power of the *ekklêsia*, limits on the power of the *dêmos*. If there are, where do they come from and how are they enforced? What is this *nomos*, that it should be superior to the will of the people?

Ancient Athens is the most democratic democracy on record, but the nineteenth-century commentator U. Wilamowitz-Moellendorff has suggested that it should not be called a *democracy* at all.⁴⁵⁴ Rather, he suggests it should be called a *nomocracy*. He goes so far as to say that “the freedom of the Athenians was built on their slavery to *nomos*,”⁴⁵⁵ and characterizes the Athenians’ concern for *nomos* as being virtually religious.⁴⁵⁶

The century before Aristotle arrived in Athens, the fifth century, was the time of Pericles. Many think of this period as the height of Athenian culture. The great dramatists were writing. The great buildings were being built. There was sculpture, art and philosophy. Silver had been discovered and the newly rich Athenians built the fleet that gave them great power.

⁴⁵² My comments on this passage are taken with a few changes from S. Wexler, A. Irvine, *Aristotle and the Rule of Law*, 23 POLIS 116 (2006).

⁴⁵³ M. Hansen, *The Athenian Assembly* (London: Blackwell, 1987), p. 8.

⁴⁵⁴ Ulrich von Wilamowitz-Moellendorff, “Exkurse, Die Herrschaft des Gesetzes,” *Philol. Unters.*, 1 (1880), p. 47.

⁴⁵⁵ Ulrich von Wilamowitz-Moellendorff, “Exkurse, Die Herrschaft des Gesetzes,” *Philol. Unters.*, 1 (1880), p. 47.

⁴⁵⁶ Ulrich von Wilamowitz-Moellendorff, “Exkurse, Die Herrschaft des Gesetzes,” *Philol. Unters.*, 1 (1880), p. 48.

This power led to the Peloponnesian Wars. There was a plague. It was a very full time. But by comparison with the fourth-century, fifth-century Athens had very little legal activity. Wilamowitz-Moellendorff even remarks that one might be tempted to say that there had been *no* legal activity in Athens from about 460 to 410.⁴⁵⁷

In contrast, the fourth century stands out as a period of tremendous legal change. The Peloponnesian Wars ended in 403 and the victorious Spartans imposed the “Thirty Tyrants” on Athens. These thirty rich Athenian citizens formed an oligarchy – *oligo* few, *archy* rule. It lasted only a year or so. Then the Athenians reverted to their historic method of government.⁴⁵⁸ As part of their return to democracy, the Athenians appointed citizen officials to compile the ancient *nomoi* that had been left to them by Solon, their great political reformer. They then set about shaping and reshaping these *nomoi* with the goal of building the best constitution (*aristei politeia*).

The overriding issue was the relationship between the *dêmos*, especially as it was represented by votes in the *ekklêsia*, and *nomos*. Laws were passed saying that no previously adopted laws could be changed; other laws were passed saying when, how, and by whom such laws could be changed. Special officers—called “law makers” (*nomothetai*)—were given new prominence. A new procedure, the *graphê para nomon*,⁴⁵⁹ was created for challenging laws passed by the assembly that were thought to be illegal. This procedure involved the other major institution in which the *dêmos* was embodied, the *dykasteria*, or jury trial.

⁴⁵⁷ Ulrich von Wilamowitz-Moellendorff, “Exkurse, Die Herrschaft des Gesetzes,” *Philol. Unters.*, 1 (1880), p. 52. This, of course, is an exaggeration; there was a great deal of legal activity in fifth-century Athens. For example, see Martin Ostwald, *From Popular Sovereignty to the Sovereignty of Law: Law, Society, and Politics in Fifth-century Athens* (Berkeley: University of California Press, 1987). It is just that, in comparison to the fourth century, the legal activity of the fifth century was much less extensive.

⁴⁵⁸ Sparta was too busy to reimpose the tyranny. She had just begun the post victory decline that resulted in her disappearance.

⁴⁵⁹ *Graphe* means “suit” or “legal action”; *para nomon* means “contrary to law.”

Juries of hundreds and even thousands⁴⁶⁰ sat regularly in Athens to hear all kinds of business, from private suits about inheritances to public suits about the conduct of the government, including diplomacy. The comic playwright, Aristophanes, makes fun of the amount of time Athenian citizens spent as jurors (*dykastai*),⁴⁶¹ and in the *Constitution of Athens* Aristotle says it was by giving the *dêmos* the *psêphos* (the voting pebble used by *dykastai*) that Solon made the people sovereign in Athens.⁴⁶² As I pointed out earlier, it is from the word *psêphos* that the word *psêphismata* was derived. I will say more of this below.

Dykasteria—literally “doings of justice”—were initiated by individual citizens and took place in the law courts. In the case of a *graphê para nomon*, one citizen would charge another with having proposed an illegal law in the *ekklêsia*. A jury of no fewer than 1000 would be convened to hear trials involving this type of action. If the defendant was acquitted, the law that had been adopted by the *ekklêsia* was confirmed. If the defendant was convicted, the law was suspended and the defendant might be fined or perhaps otherwise punished.⁴⁶³

In this procedure, the integrated contrariness of “law” was more obvious than usual and in 4th century Athens, the relationship between the *dêmos* as embodied in the *ekklêsia* and the *dêmos* as embodied in the *dykasteria* was the subject of ongoing debate. From a legal point of view, this debate is both remarkably rich and incredibly jumbled. As the Athenians worked at untangling the distinction between the rule of law and the rule of men, the powers of the assembly and the powers of the courts were constantly in flux.

Both institutions were designed to represent the *dêmos*; but there were differences. In the *ekklêsia* any citizen could speak. By contrast, in the

⁴⁶⁰ The exact size of Athenian juries is a matter of disagreement in two ways. First, we know the Athenians used different-sized juries depending on the nature of the charge that was being tried, but we do not know exactly what the different sizes were. David Stockton, in *The Classical Athenian Democracy* (Oxford: Oxford University Press, 1990), at p. 98, and D.M. Mac Dowell, in *The Law in Classical Athens* (Ithaca: Cornell University Press, 1978), at p. 36, suggest possible sizes of 100, 200, 400, 500 700, 1000, 1500, 2000 and 6000. The second uncertainty is about whether juries had an even or an odd number of jurors. Some sources suggest odd numbers of jurors were used to avoid ties. Even so, ties were not foreclosed. In *The Constitution of Athens*, Aristotle says that, if a jury is tied, the defendant wins (69.2). In *Politics*, he says “now if *dixa* (in two) the assembly comes or the court, there must be a lot or something else must be done.” (VI.iv., 1318a 40-1381b 2) It may be that over the decades conventions simply changed.

⁴⁶¹ Aristophanes, *Wasps*.

⁴⁶² Aristotle, *Constitution of Athens*, 9.1.

⁴⁶³ David Stockton, *The Classical Athenian Democracy* (Oxford: Oxford University Press, 1990), p. 44. Stockton refers to fines. There is no reason to think the punishment was limited in this way.

dykasteria there were restrictions on who could speak; but because there were no judges and no lawyers, there was no one except the parties themselves to tell the *dykastai* what law they were to apply. This contrasts sharply with modern trials in which a judge not only informs jurors about the law, but also decides what evidence they may hear and what arguments may be made before them.

In *dykasteria*, the parties appeared personally and argued their own cases. They could make any arguments they wished. They could also call witnesses if they chose to do so, including witnesses who would be asked to read a law to the *dykastai*. The only rule that seems to have governed the speeches of the parties is that each was allowed to speak only “until the water clock ran out.” For their part, the *dykastai* took an oath to obey the law, but this oath included an exception that allowed them to decide cases however they thought fit. Thus, as in the *ekklêsia*, *everything* was left up to the *dêmos*, but in a different way.

The distinction between *psêphismata* and *nomos* is fundamentally important. It is also intimately connected to our understanding of several Greek words. In a non-philosophical context, *psêphisma*, the singular of *psêphismata*, could be, and often is, translated simply as a “law” or “decree.” The word *psêphisma*, comes from *psêphos*, the voting pebbles originally used by jurors in a *dykasteria*. By Aristotle’s time, these pebbles had been replaced by bronze discs. Each disk had an axle through its center. At the beginning of a trial, each juror received two of these tokens, still called *psêphoi*. One had a hollow axle; the other had a solid axle. The *psêphoi* with the hollow axles were used to vote for conviction. Those with solid axles were used to vote for acquittal.⁴⁶⁴

At the end of each trial, there was a dykasterial ritual. Each juror walked forward with one *psêphos* in each hand, covering the ends of the axles with his fingers and thumbs so no one could see which was which. He then dropped one *psêphos* into a copper urn, the other into a wooden urn. The *psêphoi* in the copper urn counted; those in the wooden urn did not. This elaborate process was designed to insure secrecy.

⁴⁶⁴ One could say that the *psêphoi* with the hollow axles were *used to vote* for acquittal or that they *were votes* for acquittal. In *Sophistical Refutations*, I., 165a 10, Aristotle says words stand for things but are not things the way *psêphoi* are votes.

When all the jurors had voted, the *psêphoi* in the copper urn were dumped out and lined up on a pegboard by several jurors chosen by lot. The *psêphoi* with hollow axles were inserted beside those with the solid axles, one for one. When all the *psêphoi* were displayed, it was obvious to everyone who had won and who had lost.⁴⁶⁵

This is very graphic law. It explains the power of the word *psêphos*. The word was used metaphorically even about the gods⁴⁶⁶ and at some point, long before Aristotle's day, it shifted from the *dykasteria* to the *ekklêsia*, where voting was usually done by a show of hands, not *psêphoi*.⁴⁶⁷ For instance, in Aristotle's *Constitution of Athens* we read that

After the naval battle at Arginousae, the ten *strategoï*, who had been victorious in the battle, were all collectively judged [in the assembly] by one show of hands.⁴⁶⁸

Notice that the secrecy, which is part of the elaborate process of using the *psêphoi* in the *dykasteria*, is not part of a show of hands. All that is left when Aristotle refers to *psêphismata* overruling *nomos* is the simple idea of a majority vote.⁴⁶⁹ It is also worth observing that every *psêphisma* was the result of such a vote. This is not true for many *nomoi*. The laws of Solon, for instance, were never voted on. They were *nomoi*, but not *psêphismata*.

⁴⁶⁵ Aristotle, *Constitution of Athens*, 68.4. Earlier in Athenian history other methods had also been used. For example, Aristophanes makes a joke in one of his plays about a character whose finger is constantly covered in wax because of the inordinate amount of time he spends marking his votes on wax tablets while serving on juries.

⁴⁶⁶ See F. Quass, *Nomos und Psephisma* (Munich: Oscar Beck, 1971), p. 3 and citations therein.

⁴⁶⁷ M.H. Hansen, *The Athenian Assembly* (Oxford: Blackwell, 1987) says the use of the term *pseiphisma* for votes of the assembly "indicates that the assembly originally voted by ballot" (p. 41). Given that the term was applied metaphorically to the Gods, this conclusion seems too strong. *Pseiphoi* may have been used in the assembly at an early date, but the idea of a *pseiphos* could have spread to the assembly even if actual *pseiphoi* were never used there.

⁴⁶⁸ Aristotle, *Constitution of Athens*, 34.1. Cf. Xenophon, *Hellenica* 1.7. The charge against the *strategoï* was dereliction of duty: they had failed to pick up shipwrecked Athenian soldiers and sailors (both living and dead) whose ships had gone down during the largest sea battle of the Peloponnesian War. The figure ten is likely incorrect. Eight *strategoï* were most likely charged. Six stood trial and were convicted. Two fled. If the other two of the ten generals were amongst those originally charged, the charges against them were likely dropped very early in the proceedings.

⁴⁶⁹ It is interesting to note, as Aristotle does in *Politics*, that majority rule is not unique to democracy (1294a 12 to 14). If the government is in the hands of the few, rather than the hands of the *dêmos*, the majority may still rule, but it is a majority of the few that rules, rather than a majority of the many. Monarchy does not technically involve majority rule although, as some say, the king is a majority of one.

Nomos, as I explained in Chapter IV, comes from the verb *nemo*, which is associated with agricultural production. It refers to the distributing or apportioning of food and the sources for acquiring food. The contrast between *psêphismata* and *nomos* is striking. Aristotle is not just talking about mob rule versus law. He is also talking about two contrary meanings of the word “law.” One might even be tempted to say he is talking about the distinction between legal positivism and natural law. Legal positivism, a jurisprudential viewpoint first articulated seriously in the 1800s, says that a law’s status as law is determined by looking internally at the law itself. Natural law, a much older point of view, says that a law’s status as law is determined by its conformity with something outside itself. This something can be God’s law, reason, nature, or justice, depending on which particular version of natural law one prefers.

Unfortunately, this analogy will not do since the Greeks drew a strong distinction between law and nature (*nomos* and *physis*).⁴⁷⁰ Much of Greek philosophy is about this relationship. Are law and other human constructions natural, or are they mere conventions? Can human law overcome nature, or is nature something to which our law must submit? Should we try to change nature by using law? Perhaps nature has made the world the way it is supposed to be, in which case we should just accept it. Nature does not provide for justice, so why should we? In an important sense, this means that all *nomoi* have to be independent of nature.

The distinction between *psêphisma* and *nomos* turns out to be different from the distinction between legal positivism and natural law, but the distinctions are related. The same distinction is also related to the distinction between written and unwritten law. All *psêphismata* were written down; some *nomoi* were, some were not⁴⁷¹ and as I remarked earlier, *psêphisma* is “a law,” whereas *nomos* is “a law” or “law.” *Psêphismata* were regularly understood to be less general and more particular in their application. Aristotle himself says,

⁴⁷⁰ For example, see W.K.C. Guthrie, *The History of Greek Philosophy*, vol. 3 (Cambridge: Cambridge University Press, 1969), pp. 51 ff. and 118 ff., F. Heinemann, *Nomos und Physis* (Basel: F. Reinhardt, 1965), and Martin Ostwald, *From Popular Sovereignty to the Sovereignty of Law: Law, Society, and Politics in Fifth-century Athens* (Berkeley: University of California Press, 1987), pp. 250-290.

⁴⁷¹ Eventually, during the fourth century, a *nomos* was introduced that prohibited magistrates from relying upon an unwritten law. See Andocides, *On the Mysteries*, 85.

not possible *psêphisma* to be by-whole
*ouden gar endexetai psêphisma einai katholou*⁴⁷²

Loeb: for it is impossible for a voted resolution to be a universal rule.

Oxford: for decrees can never be general in character.

Our own word “law” has the same contrarity. Perhaps we must say, with Guthrie, that this contrarity “is unconsciously felt rather than intellectually apprehended.” For example, consider the following three “laws” passed by the United States Congress:

CHAP. 233.—An Act for the relief of Harvey R. Butcher.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Harvey R. Butcher, out of any money in the Treasury not otherwise appropriated, the sum of \$1,770.33 to reimburse him for moneys paid out of his personal funds in settlement of a shortage in his accounts while acting as disbursing officer, Quartermaster Corps, United States Army, at Camp Funston, the said shortage not being due to any negligence or default on his part.

Approved, June 4, 1920.

CHAP. 274.—An Act for the relief of Perry L. Haynes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to reimburse Second Lieutenant Perry L. Haynes, Coast Artillery Corps, National Guard, out of any money in the Treasury not otherwise appropriated, in the sum of \$855.75, which amount represents funds belonging to the government of the United States for which he was held accountable and which were lost through no fault of his.

Approved, June 5, 1920.

⁴⁷² IV iv., 1292a 37.

CHAP. 275.—An Act for the relief of Carolyn Wheeler Kobbe.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Carolyn Wheeler Kobbe, widow of Gustav Kobbe, who was killed as the result of an accident caused by a United States navy seaplane, the sum of \$2,500.

Approved, June 5, 1920.⁴⁷³

Are these laws? On the one hand, yes; on the other hand, no. They are statutes,⁴⁷⁴ so they must be laws; but they do not look like laws. They look like either judicial decisions or administrative orders. They do not work like laws, either. Once one of these so-called “private laws” is implemented, it ceases to have any force. It is still on the books, but it means nothing. This is not true (or at least not true in the same way) of most other laws; indeed, it makes no sense to speak of most laws as if they could be complied with only once.

Words mean contrary things. This is true of our word “law,” as well as of the Greek words *psêphisma* and *nomos*. It is also true of a third Greek word that means “a law,” *thesmos*. *Thesmos* comes from *tithêmi*, a common verb that simply means putting something somewhere. In this sense, a law is something that has been put in place. A *thesmos* is a law *because* it has been put into place. The moment of its placement can be established. If it is in place long enough, say for a century, it becomes a *nomos*. Solon’s *nomoi* can thus be called *thesmoi* and a lawgiver can be called a *nomothetei*, someone who puts a law into place.

Parallel to *thesmos* is the Greek word *themistos*.⁴⁷⁵ It, too, comes from *tithemi*, but it goes back to *Themis*, the Goddess of Justice, typically

⁴⁷³ *Congressional Record*, Sixty-Sixth Congress, Sess. II, 1920, at 1471. These three statutes were chosen virtually at random from the 1920 statutes. Every legislature passes many laws like these every year.

⁴⁷⁴ These statutes have to be passed and their passage must be voted on, but most of the legislators who vote on them probably do not pay much attention. In the Athenian assembly they were said to be “passed on the nod.”

⁴⁷⁵ I treat *thesmos* and *themistos* as linguistically cognate, as related forms of the same Greek word. I do so even though the largest and most recent edition of H.G. Liddell and R. Scott, *The Greek-English Lexicon* (Oxford: Clarendon, 1996) shows no linguistic connection between the two words and M. Ostwald, *Nomos and the Beginnings of the Athenian Democracy* (Oxford: Clarendon, 1969), which carefully examines every usage of *thesmos*, never refers to *themistos*.

pictured blindfolded and holding a balance scale.⁴⁷⁶ *Themis* is one of the *Titanides*, as is *Mnemosyne* (Memory). Memory is the mother of the Muses. *Themis* is the mother of *Eirene* (Peace), *Eunomia* (Good Law) and *Dikē* (Justice).⁴⁷⁷

Before we leave Aristotle's comment about νόμος and ψηφίσματα, we should note that he also remarks in passing that the condition that occurs in democracies when *psêphismata* are sovereign rather than *nomos* can also occur in oligarchies, except that in an oligarchy "it is not the law that is sovereign it is *archontes*, officials."⁴⁷⁸ It is hard to imagine a more prescient commentary on modern bureaucratic government.

*

I turn now to the long connected comments on law Aristotle makes in *Politics*.⁴⁷⁹ They are about the rule of law and the rule of men. Aristotle begins with a question:

whether together-going rather
poteron sympherei mallon

under the best man to be ruled
hypo tou aristou andros archesthai

or under the best law
*hē hypo tôn aristôn nomôn*⁴⁸⁰

My authority for treating *thesmos* and *themistos* as linguistically cognate is H.G. Liddell and R. Scott, *An Intermediate Greek-English Lexicon* (Oxford: Clarendon, 1889). In this work, the entry for *thesmos* gives *tithemi* as the root and says "like *themis*." This indicates that the two words have the same meaning but does not indicate that they are cognate linguistically. The entry for *themis*, however, lists *themistos* and says "(the, Root of *tithemi*)." This indication that *thesmos* and *themistos* come from the same root appeared in the first eight editions of the large lexicon. It disappeared in the ninth edition (1925-40), under the editorship of H. S. Jones. It has not reappeared in the latest reprinting with supplement (1996). I am unable to determine why it was removed. Have all the roots been removed? I am not sure. In any case, I rely on the earlier authority.

⁴⁷⁶ Apollodorus tells us that *Themis* was a child of *Gē* (Earth) and *Ouranos* (the first ruler of the universe). The couple had two early sets of children (the Hundred-Handers and the *Cyclopes*) whom *Ouranos* tied up and hurled into *Tartaros*, a place of infernal darkness, as distant from the earth as the earth is from the sky. Then *Ouranos* and *Gē* had the Titans and the Titanides.

⁴⁷⁷ In Canada, these are called "Peace, Order and Good Government."

⁴⁷⁸ IV vi., 1292b 6-7.

⁴⁷⁹ III.xv.-xvi., 1286a 8-1287b 33. (Rackham numbers these III.x-xi.) My comments on this material are taken with changes from S. Wexler, A. Irvine, *Aristotle and the Rule of Law*, 23 POLIS 116 (2006).

⁴⁸⁰ III.xv., 1286a 8-9. It is not clear why Rackham translates this as "best men."

Is it better to be governed by the best man or the best laws? Aristotle comes down tentatively in favour of the rule of law, but characteristically, he does not commit himself strongly to either side. He also avoids putting the question in the way that must have been most on his mind. Rather than asking the question in terms of democracy, he asks it in terms of kingship.⁴⁸¹

A proper king is the best person in a *polis*. He rules in everyone's interest. How could a *polis* be better governed than by the best person? For the law to govern a *polis* better than the best person, it would have to contribute something no person has. What could that be? People make the law, so how could the law have something the best person lacks?

Aristotle starts his inquiry on the side of those who are against what today we call the "rule of law":

they think to the lawful things together-to go to be kinged
dokousi dê tois nomizousi sympherein basileuesthai

the by-whole only the laws to say
to katholou monon hoi nomoi legein

but not toward the toward-falling to unto-arrange
*all ou pros ta prospiptonta epitattein*⁴⁸²

Oxford: Those who hold that kingship is advantageous argue that law can only lay down general rules; it cannot issue commands to deal with events as they happen.

Loeb: Those of the opinion that it is advantageous to be governed by a king think that laws enunciate only general principles but do not give directions for dealing with circumstances as they arise.

⁴⁸¹ As I have pointed out, Hansen cautions us not always to think of Athens when Aristotle speaks of radical democracy. (*The Sovereignty of the People's Court in the Fourth Century BC* (Odense: University of Odense Press, 1974), p. 14.) I think we must sometimes think of Athens even when Aristotle is talking about kingship.

⁴⁸² III.xv., 1286a 9-11.

Princeton: The advocates of kingship maintain that the laws speak only in general terms, and cannot provide for circumstances

Penguin: It is the view of those who believe that monarchical government is good that the laws enunciate only general principles and cannot therefore give day-to-day instructions on matters as they arise.

The Greek that is translated as “general rules,” “general principles” and “general terms” is *katholou*. We have already had occasion to look at this word. *Holou* means whole. *Kath*, *kat’* and *kata* are different forms of the same common Greek preposition. It means roughly “according to” or “by” and is important in what Aristotle says about law. *Kata nomon* (pronounced *k’ta nomon*) means according to law, or by law, or under law. *Kata grammata* (*k’ta grammata*) means in writing. *Kat* with *holou* means “by whole” as distinguished from *kath hekasta* (*kath he’ costa*) “by each,” “in particular.” *Katholou* eventually becomes our “catholic.” The idea is that since law has to make a choice in advance that covers every case, it cannot go into detail or react to changing circumstances.

The next thing Aristotle says is quite striking:

so that in whatever skill the in writing to rule stupid
*hôt en hopoiaoun technê to kata grammat’ archein êlithion*⁴⁸³

Princeton: and that for any science to abide by written rules is absurd.

Loeb: so that in an art of any kind it is foolish to govern procedure by written rules ...

Aristotle uses the example of medicine to show how stupid it would be to be governed by written rules. No sensible doctor, Aristotle says, would bind himself to a written prescription. Things change and a doctor must be prepared to change his recommended treatment: “In Egypt, after four days a doctor may change a prescription; even before that he can do so

⁴⁸³ III.xv., 1286a 11-12.

at his own risk. For the same reason,” Aristotle concludes, “it seems that to be ruled by writing and law is not the best form of constitution.”⁴⁸⁴

Having said what can be said against the rule of law, Aristotle now turns to the opposite view. He begins with a remark that has not been properly understood.

but that must under-start
alla mên kakeinon dei hyparchein

the word(s) by-whole to the rulers
*ton logon ton katholou tois archousin.*⁴⁸⁵

Loeb: At the same time, however, rulers ought to be in possession of the general principle before mentioned as well.

Oxford: But of course that general principle must also be present in the rulers.

Princeton: Yet surely the ruler cannot dispense with the general principle which exists in law.

Penguin: On the other hand, rulers cannot do without a general principle to guide them.

All four translations render the Greek words *ton logon ton katholou* as “general principle.” To translate *λόγος* as “principle” is part of the tendency I pointed out earlier to translate this word in mental terms rather than in terms of words. Scholars focus on the ability to think and thus translate *λόγος* as “reason” or “rationality.” On the one hand rationality is *λόγος*, but on the other hand there is no rationality without words. As M. Heidegger says, “only when man speaks does he think.”⁴⁸⁶

The normal, natural, obvious translation for *λόγος* in this passage is “word(s)” not “principle.” The Greek *kakeinon* is singular, it refers to *λόγος*, which is a grace plural. It generally means “words.” Aristotle is

⁴⁸⁴ III.xv., 1286a 12-16.

⁴⁸⁵ 1286a 17.

⁴⁸⁶ *What is Called Thinking?* (Harper & Row, 1968) p. 51.

referring to *grammata*, written words. To be ruled by written words is to be committed to the general words embodied in the written text. *Logon katholou* are words by-whole, general words. They do not cover things “in general,” meaning mostly. They cover everything. Aristotle says this is what we get in written laws, *logon katholou*. This is the weakness he has pointed out in them. Because they are written in general words, laws cannot deal with things “as they come up.”

But this is also the strength laws have. Humans have a weakness that written words do not have. Aristotle calls this weakness *τό παθητικὸν* (*toe path A tea con*):

better the not to-being *τό παθητικὸν* wholly
kreitton d' hō mē prosesti to pathetikon holhōs

or that together-growing (natural)
ê hō symphyes

the to law this not extend
tō men oun nomō touto ouch hyparchei

living human necessary this to have all
*psyshên d' anthrôpinên anankê tout' echein pasan*⁴⁸⁷

Oxford: That from which the element of passion is wholly absent is better than that to which passion naturally clings. This element [of passion] is not to be found in law but must always be present in the human mind.

Loeb: And a thing that does not contain the emotional element is generally superior to a thing in which it is innate; now the law does not possess this factor, but every human soul necessarily has it.

Penguin: it provides something which, being without personal feelings, is better than that which by its nature does feel. A human being must have feelings, a law has none.

⁴⁸⁷ III.xv., 1286a 18-20.

Princeton: and that is a better ruler which is free from passion than that in which it is innate. Whereas the law is passionless, passion must always sway the heart of man.

Notice how *ψυχή*, which I translate as “living,” is left out entirely by one translator and rendered by the others as “mind,” “soul” and “heart.” Notice also that these translations render *τό παθητικόν* as “passion,” “emotional element” or “personal feelings.” In Chapters I and III we had occasion to look at the word *pathos*, from which *τό παθητικόν* comes. It means being subject to change from the outside; things happen to them. The written words in the law are not subject to change in the same way people are.⁴⁸⁸ People cannot be committed to the *logos* the way *grammata* is. Even the best person is in danger of sliding away from the *logon katholou*, the general words embodied in written law.

Aristotle does not mention Solon in this connection, but he might well have. Solon was regarded in antiquity as one of the seven sages. In *The Constitution of Athens*, Aristotle describes how Solon saved Athens by rewriting its laws and then finding a way to remain committed to the *logon katholou*. In about 600 BC, 250 years before Aristotle wrote, Athens was split between the rich and the poor. Many near the bottom had sold themselves into slavery to pay their debts. Solon, a poet, came from one of the leading families in the city, but he had written about the conflict in a way that showed he was sympathetic to both sides. Aristotle says that “he put the blame for the fighting wholly on the rich” but, even so, he begged for an end to the quarrel. As Aristotle tells it,

The many being enslaved to the few, the people rose against those at the top. The struggle was severe and for a long time people were arrayed against each other. They jointly picked Solon ... and entrusted the government to him.⁴⁸⁹

It was in this context that Solon rewrote the laws. He disappointed everyone by giving each side something and neither side everything.⁴⁹⁰ He cancelled the debts of the poor but allowed the rich to retain their property.

⁴⁸⁸ It is ironic that when Aristotle gives examples of *πάθη* in *Categories*, the two he gives are “to be cut and to be burnt.” (I. iv, 2a 4) Written words are subject to these as much as people are.

⁴⁸⁹ *Constitution of Athens*, 5.1-2.

⁴⁹⁰ Later in *Politics*, Aristotle says this is proof he did a good job (1294b 14-16).

In this way, Aristotle says, he saved Athens. But after he rewrote the laws, “people kept coming to him and making trouble about the laws, criticizing them and asking questions about them.” Solon’s reaction was to leave the city, “saying he would not return for ten years. He did not think it fair for him to stay and extrapolate the laws, but each person should do what was written.”⁴⁹¹

Aristotle then comes to something like a “conclusion” on the rule of law:

Clearly, it is necessary that the best person acts as a lawmaker and lays down laws. These should not govern where they go astray; everywhere else they should.⁴⁹²

This is obvious and true but it does not tell us much. We should not follow the rule of law where the law goes astray, says Aristotle, but we should follow it everywhere else. The hard thing, of course, is to recognize when the law has gone astray, and Aristotle does not tell us how to do that.

After this, Aristotle continues in a vein that sounds very much on the side of the rule of law:

the on the one hand the law urging to rule
ho men oun ton nomon keleuôn archein

seems to urge to rule the god and the mind only
dokei keleuein archein ton theon kai ton noun monous

the on the other hand human urges
ho d' anthrôpon keleuôn

toward-putting and wild animal
prostithêsi kai thêrion

the upon-heart this
hê te gar epithymia toiouton

⁴⁹¹ *Constitution of Athens*, 11.1.

⁴⁹² III.xv., 1286a, 22-24.

and the heart ruling through-turns the best men
kai ho thymos archontas diastrephei kai tous aristous andras

wherefore without desire mind the law is
*dioper aneu orexeôs nous ho nomos estin*⁴⁹³

Loeb: He therefore that recommends that the law shall govern seems to recommend that God and reason alone shall govern, but he that would have man govern adds a wild animal also; for appetite is like a wild animal, and also warps the rule even of the best men. Therefore the law is wisdom without desire.

Oxford: He who commands that law should rule may thus be regarded as commanding that God and reason alone should rule; he who commands that a man should rule adds the character of the beast. Appetite has that character; and high spirit, too, perverts the holders of office, even when they are the best of men. Law is thus ‘reason without desire’.

Princeton: Therefore he who bids the law rule may be deemed to bid God and Reason alone rule, but he who bids man rule adds an element of the beast; for desire is a wild beast, and passion perverts the minds of rulers, even when they are the best of men. The law is reason unaffected by desire.

Penguin: Therefore he who asks law to rule is asking God and Intelligence and no others to rule; while he who asks for the rule of a human being is bringing in a wild beast; for the human passions are like a wild beast and strong feelings lead astray rulers and the very best men. In law you have the intellect without passion.

The last line in this passage is one of the most famous things Aristotle says. He can be quoted as saying:

⁴⁹³ III. xvi., 1287a 28-33. I read 1287a 28 as coming directly after 1286a 24 and treat 1286a 25-1287a 27 as an insertion. This is not to doubt its authenticity. Aristotle may have stuck the passage in during rewriting. Note that the Loeb edition of the Greek text has a mistake at 1287a 28. The word νόμον “law” is given there as νοῦν “mind.”

“The law is wisdom without desire.”

“The law is reason without desire.”

“The law is reason unaffected by desire.”

“In law you have intellect without passion.”

On the one hand these are all the same, on the other hand they are not.

Aristotle’s point is that letting people, rather than law, rule adds a “wild animal.” So strongly is this comment in favour of the rule of law over the rule of men that Aristotle then goes back and denies his Egyptian medical example:

The analogy from the arts—that it is totally fouled up to do medicine from a book and preferable to use a person with skill—is false. Doctors do not go against written words out of friendship, but earn their fees by curing sick people. Those who rule a *polis* arrange a lot of things out of spite and friendship. If you suspected your doctor of being loyal to your enemies and trying to kill you for pay, you’d look for your cure in books.⁴⁹⁴

A more fitting analogy in favour of the rule of law is difficult to find.

Some of Aristotle’s ideas in this context are very abstract, but he also often says the most ordinary things:

When a doctor is sick he calls another doctor; when a trainer needs training, he calls a trainer. People are not able to judge truthfully about their own personal business because they have *pathei* about them. It’s clear that when you look for justice, you have to look in the middle and law is in the middle.⁴⁹⁵

The Greek for “law is in the middle” is *ho nomos to meson*. The Oxford translates *meson* as “neutral standard” and add a note saying “*mesos*,

⁴⁹⁴ III.xvi., 1287a 33- 41. This is my translation.

⁴⁹⁵ III.xvi., 1287b 1-5. This is my translation.

literally ‘in the middle’ or ‘the mean’.” “Neutral standard” is misleading in at least one important sense: law is not a neutral standard and it is not meant to be a neutral standard. Law is supposed to be against some actions and for others. Law is the glue that holds the *polis* together. It is the judges’ personal feelings that need to be eliminated, or at least sublimated. Rackham uses “impartial” as a translation for *meson* and this comes closer to what Aristotle means by in the middle.

Aristotle is not quite finished with the question of whether we should prefer the rule of law or the rule of men. In a typically Aristotelian way, he draws yet one more contrary distinction.

more ruling and about more ruling things
eti kyriôteroi kai peri kyriôterôn

the in writing law the from the *ethos* are
tôn kata grammata nomôn oi kata ta ethê eisin

so that if the in writing human rules not-falling-more
hôt’ ei tôn kata grammata anthrôpos archôn asphelesteros

but not the from the *ethos*
*all’ ou tôn kata to ethos*⁴⁹⁶

Loeb: Again customary laws are more sovereign and deal with more sovereign matters than written laws, so that if a human ruler is less liable to error than written laws, yet he is not less liable to error than the laws of custom.

Oxford: But laws resting on unwritten custom are even more sovereign and concerned with issues of still more sovereign importance, than written laws; and this suggests that, even if the rule of a man be safer than the rule of written law, it need not therefore be safer than the rule of unwritten law.

Princeton: Again customary laws have more weight, and relate to more important matters, than written laws, and a man may be

⁴⁹⁶ III.xvi., 1287b 5-8.

Princeton: No one will doubt that the legislator should direct his attention above all to the education of the young.

I have remarked several times that translations reverse what Aristotle says. He puts the fact first and the fact that people would not disagree about it second. The Loeb, Penguin and Princeton translations all put the fact that no one would disagree ahead of what they would not disagree about. The Oxford translation follows them in this and it also puts the point positively where Aristotle puts it negatively.

Oxford: All would agree that the legislator should make the education of the young his chief and foremost concern.

As I have said before, I do not understand why there is this insistence on turning Aristotle around, but if we pass this stylistic matter and look at the substance of what Aristotle says, we see that it is quite puzzling. Why is the education of the young so important to the lawmaker and why is Book VIII mostly about the musical education of the young? Why should a lawmaker be especially concerned with young people's musical education?

The answer, I think, is best seen through the analogy of an old phonograph. The law that is *kata grammata* is the needle, the sharp point sticking out of the ethos of the *polis*. Aristotle says that someone who wants to make law must not fiddle around making fine adjustments to the placement of the needle. He who would make law must move the arm, the *ethos*. The music of the young in the 60's – Elvis Presley, The Beatles, Bob Dylan, the blues – was a big part of changing young people's attitudes toward sexuality. Family law is totally different from what it was 50 years ago. No amount of small tinkering with the written law could have worked this change.

Plutarch said something that makes Aristotle's meaning even clearer. He said Thales

had a reputation as a composer of lyric verse and used this art to cloak his true activities, which were those of any powerful legislator, in the sense that his songs were actually arguments in favour of obedience and political concord. This aspect of his songs was enhanced by the music and rhythm, which were so

orderly and soothing that anyone listening to them became, without being aware of it, a more even-tempered person and learnt to replace the mutual hostility which prevailed there at the time with an admiration for noble qualities.⁴⁹⁸

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By way of conclusion, I want to point out one last contrariness that has to do with natural law. As we have seen, on the one hand Aristotle is not a natural lawyer, on the other hand he is. When he is a natural lawyer, on the one hand Aristotle says the nature of law is good, on the other hand he says it is bad. Contrary to both of these, Aristotle describes the nature of law in a way that is neither good nor bad. It's just how it is.

One example of this comes up in Book VII. After Aristotle says,

and the well-lawed necessarily well-arranged to be
kai tēn eunomian anankaion eutaxian einai

he says

the very over-throwing number
ho d' lian hyperballōn arithmos

not possible to with-have in arrangement
*ou dynatai metechein taxeōs*⁴⁹⁹

Loeb: but an excessively large number cannot participate in order.

Oxford: But an unlimited number cannot partake in order.

Princeton: but a very great multitude cannot be orderly.

Penguin: But an excessively large number cannot be orderly.

⁴⁹⁸ Plutarch, *Greek Lives*, trans., R. Waterfield (Oxford, 1998), pp. 11-12.

⁴⁹⁹ VII.iv., 1326a 31-32.

This is a comment about the nature of law that does not have any good or bad to it. It's a simple statement about reality. If a *polis* has too many people, it cannot be arranged, it cannot have law. After some very fanciful comments about how large is too large, Aristotle adds this comment:

The practical business of the *polis* is of the rulers and the ruled. Rulers work on the arranging and judging. Judging about justice and offices is thinking according to merit. It's necessary to know what the other citizens do. Where this doesn't happen the offices and judgments must come out fouled up. For both of them it is not just to approximate (*autoschediazein* – to self-schedon), which seems to be the case in overly-populated places.⁵⁰⁰

This comment is very interesting because some things Aristotle says suggest that he thinks law should be objective. For instance, “Law is wisdom without passion.” Here, Aristotle is saying law cannot be objective in the sense of being neutral or treating everyone the same. It can be objective only in the sense of knowing everyone and then treating them as they deserve to be treated.

Another example of Aristotle being realistic in his natural law is in *Politics* V. Aristotle has a longish set of notes on what destroys and what saves the *politeia* of a *polis*. *Politeia* is usually translated as “constitution.” Much of *Politics* is about the different *politeias*, kingship, dictatorship, aristocracy, oligarchy, *politeia* and democracy. *Politeia*, as Aristotle himself notices, is the name of one *politeia*.

Aristotle says

first on the one hand clear that
prôton men oun délon hoti

if we have through what destroys the *politeias*
eiper echomen di hôn phtheirontai hai politeiai

we have also through what saves
echomen kai di hôn sôzontai

⁵⁰⁰ VII.iv., 1326b 13-21. This is my translation.

the opposite of the opposite making
tôn gar enantiôn tanantia poiêtika

destruction saving opposite
phthora de sôtêria enantiôn

in to the well-mixed *politeias*
en men oun tais eu kekpramenais politeiais

if other must to watch
eiper allo ti dei têrein

how none against-law and especially
hopôs mêthen paranomôsi kai malista

the little guard
to mikron phylattein

unseen past-creep the against-law
lanthanei gar paradyomenê hê paranomia

as the *ousias* the little costs cost often
hôsper tas ousias hai mikrai dapanai dapanôsi pollakis

coming
ginomenai

unseen the cost through not as a whole becomes
lanthanei gar hê dapanê dia to mê athroa gignesthai

against-talking the thinking under them
paralogizetai gar hê dianoia hyp' autôn

as the sophists' word(s)
hôsper ho sophistikos logos

if each small and all
ei hekaston mikron kai panta

this is on the one hand so
touto d' esti men hōs

it is on the other hand so not
esti d' hōs ou

the whole and the all not little
to gar holon kai ta panta ou mikron

but together-lies from little
*alla synkeitai ek mikrôn*⁵⁰¹

I reproduce four translations of this long passage, making small comments on each. I think it is instructive to notice the differences between them.

Loeb: First then it is clear that if we know the causes by which constitutions are destroyed we also know the causes by which they are preserved; for opposites create opposites, and destruction is the opposite of security. In well-blended constitutions therefore, if care must be taken to prevent men from committing any other breaches of the law, most of all must a small breach of the law be guarded against, for transgression of the law creeps in unnoticed, just as a small expenditure often ruins men's estates; for the expense is not noticed because it does not come all at once, for the mind is led astray by the repeated small outlays, just like the sophistic puzzle, 'if each is little, then all are a little.' This is true in one way but in another way it is not; for the whole or total is not little, but made up of little parts.

Notice how the Loeb translates the same word once as "breaches of the law" and once as "transgressions of the law." Notice also the translation of *ousias* as "men's estates." This pun on "substance" – the substance of a man is his estate – is reproduced in all the translations.

Oxford: It is clear, to begin with, that to know the causes which destroy constitutions is also to know the causes which ensure

⁵⁰¹ V. viii, 1307b 27-40. (Rackham: V. vii.)

their preservation. Opposite effects are brought about by opposite causes; and destruction and preservation are opposite effects.

On this basis we may draw a number of conclusions. The first is that in constitutions where the elements are well mixed there is one thing as vitally important as any: to keep a look-out against all lawlessness, and, more particularly, to be on guard against any petty forms. Lawlessness may creep in unperceived, just as petty expenditures, constantly repeated, will gradually destroy the whole of a fortune. Because it is not all incurred at once, such expenditure goes unperceived; and our minds are misled by the logical fallacy, ‘When each is small, all are small too’. This is true in one sense, but it is not true in another. The whole or total is not small, even though the elements of which it is composed are small.

Here *ousias* becomes “the whole of a fortune” and notice how the second paragraph begins: “On this basis we may draw a number of conclusions. The first is that ...” What Greek does this translate?

Princeton: In the first place it is evident that if we know the causes which destroy constitutions, we also know the causes which preserve them; for opposites produce opposites, and destruction is the opposite of preservation.

In all well-balanced governments there is nothing which should be more jealously maintained than the spirit of obedience to law, more especially in small matters; for transgression creeps in unperceived and at last ruins the state, just as the constant recurrence of small expenses in time eats up a fortune. The expense does not take place all at once, and therefore is not observed; the mind is deceived as in the fallacy which says that ‘if each part is little, then the whole is little’. And this is true in one way, but not in another, for the whole and the all are not little, although they are made up of littles.

Notice how the Princeton translation comes close to retranslating when it uses “littles” and how it reverses Aristotle, translating *mêthen paranomôsi*, none against-law, as “the spirit of obedience to law.” Notice also that there is no Greek for “at last ruins the state.”

Penguin: The first and obvious point to make is that if we have properly grasped the causes that destroy constitutions (and I think we have), then we know what things will preserve them. For opposites are productive of opposites, and destruction is the opposite of preservation.

Now in constitutions that are well-blended it is essential to take precautions against anything being done contrary to the laws of that constitution, and in particular to guard against the insignificant breach. Illegality creeps in unobserved it is like small items of expenditure which when oft-repeated make away with a man's fortune. The spending goes unnoticed because the money is not spent all at once and this is just what leads the mind astray. It is like the sophistic argument which says 'If each is small, all is small', which may or may not be true; the whole or the all may be made up of small amounts without being small.

The Penguin translation has the audacity to insert a parenthetical confirmation in Aristotle's very own voice – "(and I think we have)" – and it translates *touto d' esti men hōs esti d' hōs ou* as "which may or may not be true." Aristotle does not say "true." He says "so." And he does not say "may or may not be so." He says "on the one hand it is so, on the other hand it is not so." Finally, the Penguin translates *mikron*, little, as "insignificant." Aristotle's precise point is that the little against-laws are the significant ones.

That the little against-laws cumulate into a big against-law is a recognition of something natural about law that is neither good nor bad. It is simply a fact. Aristotle's natural law can turn out to be nothing more than one of his observations about what one sees if one looks at law. A final example of this comes in *Politics* VI where there is a longish passage in which Aristotle talks about the necessity of enforcing the law. This passage contains another pun like the pun on *ousia*.

There were no professional policemen in Athens. Citizens enforced the law themselves. One citizen could arrest another as part of the process of bringing him to court and new citizens were appointed each year to enforce legal judgments. This office, Aristotle says, is

the most necessary pretty much and the most difficult
*anankaïotatê de schedon kai chalepotatê*⁵⁰²

Aristotle comments on both the necessity and the difficulty of enforcing the law. Interestingly, he presents his comments in the reverse order, saying

difficult on the one hand ... necessary on the other hand
*chalepê men ... anankaïa d' ...*⁵⁰³

What makes this office difficult, is that people shun those who perform are in it, but

necessary on the other hand it is that not help
anankaïa d' estin hoti ouden ophelos

to come on the one hand judgment about the justice
ginesthai men dikas peri tôn dikaiôn

these on the other hand not take end
tautas de mê lambanein telos

so that if not becoming to be in common
hôst ei mê gignomenôn koinônein

impossible to each other
adynaton allêlois

and of practices not becoming
*kai praxeôn mê gignomenôn*⁵⁰⁴

To make sense of my retranslation it is necessary to consult the translations. They say:

Loeb: but it is necessary, because there is no use to trials being held about men's rights when the verdicts are not put into execution, so that if when no legal trial of disputes takes place

⁵⁰² VI.viii., 1321b 41. (Rackham numbers this as VI.v.)

⁵⁰³ 1322a 2 and 1322a 5. Perhaps translators reverse what Aristotle says because they see him do it.

⁵⁰⁴ VI.viii., 1322a 5-8.

social intercourse is impossible, so also is it when judgments are not executed.

Oxford: But it is, none the less, an indispensable office. There is no benefit in bringing cases before the courts of justice if these have no effective conclusion; and if men cannot share a common life without a system for deciding cases, neither can they do so without a system for enforcing such decisions.

Princeton: Still the office is necessary; for judicial decisions are useless if they have no effect; and if society cannot exist without them, neither can it exist without the execution of them.

Penguin: Yet it is most essential: it is no good having legal decisions on matters of right and justice if these are to have no effect. If it is impossible for men to live in a society in which there are no legal decisions, it is also impossible where they are not carried out.

The pun in this passage is on the word *τέλος*, end. This word plays a large part in some of Aristotle's most metaphysical comments. The *τέλος* of an *ουσία*, the end of a thing, is its *φύσις*, its nature. The *τέλος* of a boy is to be a man. The *τέλος* of a colt is to be a horse. The *τέλος* of an acorn is to be an oak. The *τέλος* of a pine cone is to be a fir tree. In this passage Aristotle says the *τέλος* of law is to be applied, to have an effect. This is a remarkably interesting observation about the nature of law.

Chapter VI Brief Conclusions

Translation is a very difficult art. Its main purpose must be to make the meaning of what is said in a foreign language as clear as possible. But, inevitably, when meaning is made clear in another language, something is lost. This is especially true with Aristotle, who did not write clearly in the first place. I trust that my retranslations have made clear to readers how the different translations change what Aristotle says in small ways and large ones. I draw particular attention to the passage analyzed at the end of Chapter III. Because the translations do not pay enough attention to the exact words Aristotle uses in that passage, their efforts to convey his meaning in clear, sophisticated English actually wind up missing his meaning. I would also draw attention to the point I make in Chapter IV about the platonization of *Ethics*, in particular, the translation of *δικαιοσύναι* as “kinds of justice,” rather than “justices.”

Another thing worth noting in Chapter IV is Aristotle’s treatment of money. The domination of money has been taken for granted in Western society since Rome. The distinctive thing about Greek society was that it began before the use of money and retained a memory of *χάρις* in its collective unconsciousness. Socrates was willing to die because he thought the Athenians had come to think about nothing but money. He could see Rome coming and did not want to live there.

I also trust that, without my harping on the fact, readers have been able to see Aristotle’s observation that *λόγος* is an integrated contrariness. This is highlighted by my use of “on the one hand/on the other hand” to translate the Greek construction *μεν/δε*, but it is evident in everything Aristotle says. Aristotle is marvelously observant and speculates about everything he sees, but he does not come to conclusions about things, or rather, he comes to two conclusions about everything.

In particular, it seems to me, it is important to see this about natural law. The words “natural” and “law” are both richly integrated contrarities. This means that on the one hand Aristotle is not a natural lawyer, on the other hand he is a natural lawyer. It also means that as a natural lawyer, on the one hand Aristotle sees law as a phenomenon without moral overtones, and on the other hand he sees law as a phenomenon with deep moral

overtones. And it means that when he sees law as having moral overtones, on the one hand Aristotle sees law as good, on the other hand he sees it as bad. On final contrariness in “natural law” is that on the one hand, *epieikes* is natural law, on the other hand, *epieikes* is a contrary of law. Natural law *μὲν τάχιστα*, natural law *δε ἀταχία*.

I have put my conclusions at the beginning, as premises. I do not think Aristotle has a quote-unquote philosophy. Aristotle does philosophy and the philosophy he does can be called “linguistic.” I don’t like this word very much. It is too Latin. I prefer to say Aristotle is interested in *λόγος*, what we say about things and behind that, what we think about things.

I want to end the book with a hypothesis and an observation about something that may be just *συμβεβηκός* – a coincidence. The hypothesis is about Aristotle’s logic, the thing for which, over the centuries, he has been best loved. If Aristotle had not done logic, the Muslim scholars would not have preserved him and we would have lost his works. My hypothesis is that Aristotle’s logic is hypothetical. Given what we have seen in this book, it should be clear that Aristotle could be read as saying: this is what logic would be like, if logic were possible.

We do not have to read Aristotle as espousing logic. He can be read as explaining it, hypothetically. If *λόγος* – the special tool that makes humans human – were not a matter of integrated contrariness, if words could mean one thing and not the opposite, humans could be what we would call “logical.” Whether it is possible for humans to be logical is a very difficult question. If it is possible, it is not possible in ordinary language, but it might be possible in mathematics.

As I understand it, we have now come to think that it is not possible for even symbolic logic and mathematics to be “logical” in the sense that all the symbols have one and only one meaning. This is not Aristotle’s conclusion, but he does speculate about the meaning of numbers. He does this in Book M (pronounced, *Mu*) of *Metaphysics*. Here is the Oxford translation of part of what he says. Notice how much it sounds like a retranslation, or perhaps even a detranslation.

Clearly, also, it is possible, if all the units are inassociable, that there should be a 2-itself and a 3-itself; and so with the other

numbers. For whether the units are undifferentiated or different from each other, number must be counted by addition, e.g. 2 by adding another 1 to the one, 3 by adding another 1 to the two and 4 similarly. This being so, numbers cannot be generated as they generate them, from the 2 and the 1; for 2 becomes part of 3, and 3 of 4, and the same happens in the case of the succeeding numbers, but *they* say 4 came from the first 2 and the indefinite 2, – which makes two 2's *other* than the 2-itself; if not, the 2-itself will be part of 4 and one other 2 will be added. And similarly 2 will consist of the 1-itself and another one; but if this is so, the other element cannot be an indefinite 2; for it generates one unit, not, as the indefinite 2 does, a definite 2.⁵⁰⁵

If one wished to make fun of Aristotle and those who read him, one could not pick a better passage than this or the passages surrounding it. They are unintelligible, at least in detail. Overall, what Aristotle is saying is that numbers are not clear even to mathematicians. It is ironically perfect that these comments should come in a misnumbered book. M is the 12th letter of the Greek alphabet and this would lead one to suspect that Book M would be Book XII of *Metaphysics*. It is Book XIII.⁵⁰⁶

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Scholars speak of Plato as having a close connection to numbers, but Aristotle's connection to numbers is very strong and, while it may be *συμβεβηκός*, Aristotle's Four Causes bear a striking resemblance to Euclid's Five Postulates, the basis of geometry, and Peano's Five Axioms, the basis of arithmetic. They all have the same form 4+1.

Here are Euclid's Five Postulates.

1. For every pair of points, it is possible to construct a line segment joining them;
2. Every line segment can be extended indefinitely in a straight line in either direction;

⁵⁰⁵ W.D. Ross, *The Works of Aristotle*, Volume VIII, *Metaphysics* (Oxford, 1928). XIII. vi, 1081b 10-27.

⁵⁰⁶ Book I is Book A. Book II is Book α.. Book III is Book Β ...

3. For every pair of points, it is possible to construct a circle centered at the one point and passing through the other;
4. Any two line segments emanating from the same point determine an angle.
5. For any line L and point P not on line L , there exists a unique line that is parallel to L (never meets L) and passes through P

The fifth postulate is different from the first four. The first four are definitions. The fifth one is a claim about reality. For many years it was thought the fifth postulate could be derived from the other four. Mathematicians attempted to accomplish this derivation for centuries but in the 19th century it was discovered that the fifth postulate was not derivable from the other four. The fifth postulate is simply different from the others. It is unique. It is a mechanism by which the other four are applied.

Worded as it is here, Euclid's fifth postulate, which means that two parallel lines remain the same distance apart no matter how far they are extended, applies the other four postulates to flat space. If the fifth postulate is reworded to say that parallel lines converge as they are extended, the fifth postulate applies the other four to the surface of a sphere. If the fifth postulate is reworded to say that two parallel lines diverge as they are extended, it applies geometry to hyperbolic space, the inside surface of a sphere. The first four postulates are the same in flat, incurving and outcurving spaces. The fifth differs in all three.

Here are Peano's Five Axioms.

1. There is a natural number 0
2. Every natural number has a successor, denoted by $S(a)$
3. There is no natural number whose successor is 0
4. Distinct natural numbers have distinct successors; if $a \neq b$ then $S(a) \neq S(b)$
5. If a property is possessed by 0 and also by the successor of every natural number which possesses it, then it is possessed by all natural numbers.

The first four axioms set up the system of natural numbers. This includes zero and all positive integers but leaves out negative integers and fractions. The fifth axiom, called the axiom of induction, defines induction in arithmetic. Using induction you can define addition and multiplication

over all the natural numbers. Addition and multiplication are the two basic operations of arithmetic. With induction you can define all of mathematics. Just as Euclid's fifth postulate makes geometry possible, so Peano's fifth axiom makes arithmetic possible.

It turns out that Euclid's "Five" Postulates are actually his 4+1 postulates and that Peano's "Five" Axioms are actually his 4+1 axioms and – here is the *συμβεβηκός* part – Aristotle's "Four" Causes are actually his 4+1 causes. Aristotle's Four Causes, the four ways we speak of "cause,"⁵⁰⁷ are

1. The efficient cause – the worker who builds the house.
2. The material cause – the wood from which the house is built.
3. The formal cause – the plans for the house.
4. The final cause – the purpose of the house.

The house is an *ουσία*, a hentity, a thing that is. If the builder had not built it, there would be no house. If there had been no wood, there might be a house, but not this particular house. (Remember, an *ουσία* is a particular thing.) If there had been different plans, again there might be a house, but not this house. And of course, if people did not need houses, there would be no houses at all, so this particular house would not exist.

Aristotle applies the four causes to everything and says on the one hand, everything physical can be explained in terms of them, and on the other hand, there is "luck."⁵⁰⁸ Some physical things cannot be explained, but we explain them anyway. If you go to the market and meet someone you planned to meet, that can be explained. If you go the market and meet someone someone you didn't plan to meet who owes you 10 drachmae, that cannot be explained, but we explain it. We say you met the person who owed you the money "because of luck."⁵⁰⁹

⁵⁰⁷ The Greek for "cause" is *αἴτιος*, *eye' tea oss*. This is also the word for "responsibility." This is the original meaning of "cause at law." I refer readers back to the similar point I made about *κατηγορέω* at the end of Chapter I.

⁵⁰⁸ The Greek word for "luck" is *τύχη* (*tea' chA*). The ch is as it is in Bach. This word goes back to a root that means "to hit." I always think the Greek word sounds like the Yiddish word for "luck," *tuchos*, which also has a second meaning, "bottom." Aristotle talks about the four causes in *Physics*, II. iii, 195a 15-26 and about luck in *Physics*, II. iv-vi, 198a 13. Like all other *logos*, "luck" is an integrated contrarity. There is good luck and bad luck; *τύχη* and *automaton* (*ow toe' ma ton*). There is also *συμβεβηκός*.

⁵⁰⁹ *Physics*, II. v, 197a 3.

Luck is an explanation that explains nothing and Aristotle says it is *adêlos anthrôpô*, “unclear to humans.”⁵¹⁰ Just as Euclid’s +1 postulate works differently from his 4 postulates and Peano’s +1 axiom works differently from his 4 axioms, so luck, Aristotle’s +1 cause, works differently from his 4 causes.

The apparent connection between Aristotle’s 4+1 causes, Euclid’s 4+1 postulates and Peano’s 4+1 axioms is striking, but it may be *συμβεβηκός* – merely apparent, coincidental, just a matter of luck. If this connection is not *συμβεβηκός* it may have to do with two overlapping contrarities, overlapped by yet +1.

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+1 is a trope with Aristotle. (It comes on the one hand as +1, and on the other hand as 1+. Recall Aristotle’s 1+9 uses of “is.”) Aristotle uses +1 in various contexts in various different works. For instance, at *Politics* 1285b 20, Aristotle says there are four kinds of kingship and then at 1285b 30, he says there is a +1 kind as well. At 1293a 37, he says there are four forms of constitution, and then at 1293b 40, he says there is a +1 form. These examples may suggest that the trope is 4+1. I think 4+1 is important, but +1 comes with other numbers as well. I will not give examples but allow interested readers to find them on their own.

⁵¹⁰ *Physics*, II. v, 197a 10.