

LAW, VIRTUE AND SUBJECTIVITY: JUSTICE AND ETHICAL FORMATION IN BOOK V OF THE NICOMACHEAN ETHICS

LEI, VIRTUDE E SUBJETIVIDADE: JUSTIÇA E FORMAÇÃO ÉTICA NO LIVRO V DA ÉTICA NICOMAQUEIA

LEY, VIRTUD Y SUBJETIVIDAD: JUSTICIA Y FORMACIÓN ÉTICA EN EL LIBRO V DE LA ÉTICA A NICOMAQUEA



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ABSTRACT

This article examines the relationship between law and subjectivity based on Book V of Aristotle's Nicomachean Ethics, focusing on the articulation between legal normativity and the ethical formation of the subject. The central problem addressed concerns how legal justice depends on previously constituted subjective dispositions and to what extent the effectiveness of law presupposes an ethical education of the psychē. The guiding hypothesis is that, in Aristotle, law (nomos) does not operate autonomously, but achieves effectiveness through its mediation with habit (hexis) and the containment of excess (hybris), revealing a mutual implication between legal order and moral subjectivity. Methodologically, the study adopts a philosophical-hermeneutical reading of Book V, structured around three conceptual triads: nomos–hexis–hybris, aretē–dikē–adikia, and dikaiosynē–dikaion–dikaios. The analysis demonstrates that Aristotelian justice cannot be reduced to formal legality, since it requires the integration of law, virtue, and prudent judgment, thereby assigning a constitutive role to subjectivity in the realization of justice. The article concludes that this perspective offers a significant contribution to legal philosophy by showing that the legitimacy and effectiveness of legal norms depend on their alignment with ethical formation and the ethos of the political community.

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RESUMO

Neste artigo investiga-se a relação entre direito e subjetividade a partir do Livro V da *Ética Nicomaqueia* de Aristóteles, examinando como a normatividade jurídica se articula com a formação ética do sujeito. O problema central consiste em compreender de que modo a justiça legal depende de disposições subjetivas previamente constituídas, e em que medida a eficácia do direito pressupõe uma educação ética da *psyché*. Parte-se da hipótese de que, em Aristóteles, a lei (*nomos*) não atua de forma autônoma, mas encontra sua efetividade na mediação com hábitos (*hexis*) e na contenção da desmesura (*hybris*), o que revela uma mútua implicação entre ordenamento jurídico e subjetividade moral. Metodologicamente, adota-se uma leitura filosófico-hermenêutica do Livro V, estruturada a partir de três tríades conceituais: *nomos–hexis–hybris*, *areté–diké–adikia* e *dikaiosynē–dikaion–dikaios*. Como resultado, demonstra-se que a justiça aristotélica não se reduz à legalidade formal, mas exige a integração entre lei, virtude e julgamento prudencial, conferindo à subjetividade um papel constitutivo na realização do justo. Conclui-se que essa concepção oferece uma contribuição relevante para a filosofia do direito, ao evidenciar que a legitimidade e a eficácia das normas jurídicas dependem de sua correspondência com a formação ética dos sujeitos e com o *ethos* da comunidade política.

Palavras-chave: Direito. Subjetividade. Justiça. Aristóteles. *Ética Nicomaqueia*.

RESUMEN

Este artículo investiga la relación entre derecho y subjetividad a partir del Libro V de la *Ética a Nicómaco* de Aristóteles, examinando cómo la normatividad jurídica se articula con la formación ética del sujeto. El problema central consiste en comprender cómo la justicia jurídica depende de disposiciones subjetivas previamente constituidas y en qué medida la eficacia del derecho presupone una educación ética de la psique. Parte de la hipótesis de que, en Aristóteles, el derecho (*nomos*) no actúa de forma autónoma, sino que encuentra su eficacia en la mediación con los hábitos (*hexis*) y en la contención del exceso (*hybris*), lo que revela una implicación mutua entre el orden jurídico y la subjetividad moral. Metodológicamente, se adopta una lectura filosófico-hermenéutica del Libro V, estructurada a partir de tres tríadas conceptuales: *nomos–hexis–hybris*, *areté–diké–adikia* y *dikaiosynē–dikaion–dikaios*. Como resultado, se demuestra que la justicia aristotélica no se reduce a la legalidad formal, sino que requiere la integración del derecho, la virtud y el juicio prudencial, confiriendo a la subjetividad un papel constitutivo en la realización de la justicia. Se concluye que esta concepción ofrece una contribución relevante a la filosofía del derecho, al destacar que la legitimidad y la eficacia de las normas jurídicas dependen de su correspondencia con la formación ética de los individuos y con el *ethos* de la comunidad política.

Palabras clave: Derecho. Subjetividad. Justicia. Aristóteles. *Ética a Nicómaco*.

1 INTRODUCTION

The relationship between law and subjectivity has been one of the central problems of practical philosophy since Antiquity, reappearing, under different formulations, in contemporary debates on normativity, legal legitimacy and the formation of the subject. Although the modern tradition of law has favored formalistic and institutionalist approaches, there is a growing focus on the subjective dimension of legal normativity in the human and social sciences, especially with regard to the internalization of norms, the ethical training of agents, and the social conditions for the effectiveness of law. In this context, the Aristotelian reflection on justice, developed in Book V of the *Nicomachean Ethics*, remains a fundamental theoretical reference, although often underexplored in its potentiality for the analysis of the articulation between law, ethics and subjectivity.

The problem that guides this article is to understand how, in Aristotle, legal justice is not only based on the exteriority of the norm, but presupposes previously constituted subjective dispositions, formed within the community ethos. In other words, it investigates to what extent the efficacy and legitimacy of the law depend on a continuous mediation between the legal system and the ethical formation of *psychē*. The hypothesis defended is that, in Aristotelian thought, law (*nomos*) does not operate autonomously or merely coercively, but finds its effectiveness in the articulation with habits (*hexis*) and in the containment of immeasurability (*hybris*), which reveals a mutual structural implication between legal normativity and moral subjectivity.

The literature specialized in the philosophy of law, when returning to Aristotle, tends to emphasize above all the distinction between legal justice and private justice, or even the notion of equity (*epieikeia*) as a corrective of the law. However, the systematic analysis of the role of ethical subjectivity in the realization of justice remains relatively marginal, especially when considered from the internal categories of Book V. In this article, we seek to contribute to this debate by showing that Aristotelian justice cannot be adequately understood without taking into account the formation of character, the education of the passions and the exercise of prudential judgment. elements that link the law to social practices and to the concrete experience of political life.

Methodologically, a philosophical-hermeneutic approach is adopted, based on the analytical reading of the Greek text of the *Nicomachean Ethics* (Bekker's edition), articulated with classical and contemporary commentaries. The investigation is organized from three conceptual triads that structure the relationship between law and subjectivity in Aristotelian thought: *nomos–hexis–hybris*, which makes explicit the tension between law, habit and excess; *areté–diké–adikia*, which articulates virtue, justice and injustice in the realm of human

actions; and *dikaiosynē–dikaion–dikaios*, which allows us to understand the role of judicial institutions, the fairness of decision-making and prudential judgment. These triads are not treated as isolated categories, but as interdependent conceptual nuclei, whose unity reveals the inseparability between ethics and law.

In developing this analysis, it is argued that justice, in Aristotle, is not reduced to formal conformity with the law, but requires the integration between normativity, virtue and practical judgment, conferring on subjectivity a constitutive role in the realization of justice. Such a perspective allows for a critical rethinking of contemporary conceptions of law that dissociate legality and ethical formation, offering theoretical subsidies for current debates on legal legitimacy, civic education and institutional rationality.

The text is organized as follows: in the first section, the triad *nomos–hexis–hybris* is analyzed, highlighting the relationship between law, habit and immeasurability; in the second, the triad *aretété–diké–adikia* is examined, focusing on the articulation between virtue, justice and injustice; in the third, the triad *dikaiosynē–dikaion–dikaios* is discussed, addressing judicial institutions, the fairness of the decision and the role of the judge; Finally, the conclusion summarizes the results and points out theoretical implications for contemporary philosophy of law.

2 NOMOS-HEXIS-HYBRIS

The triad *nomos-hexis-hybris*, in the "Nicomachean Ethics", points to a circularity between law, *nomos*, the *hexis*, the habit, and the *hybris*, the impulse, which must always be considered by legal science in the creation and improvement of the law. The relationship between Law and Subjectivity occurs in the imperative of the law on excessive impulses and in the approval of good habits. Although *nomos-hexis-hybris* is a triad in Aristotelian thought, it is convenient to separate them in order to process the systematic examination.

2.1 NOMOS

□□□□s, law, is the right of the community set forth in a constitution. In the Nicomachean Ethics, the law translates the legacy of the *communitarian ethos*. The community has learned the hard way what promotes *eudaimonia*, happiness, and what destroys it. So he took this experience into code. As a result, people learn from the law what should be done and what should not be done. The first is linked to honor within the community and the second is linked to punishments. This distinguishes customary law from legal law. But the relationship between *nomos-hexis-hybris* is explosive because it is a struggle between reason and desire.

It can then be said that there is no city without justice and there is no political justice without law, that is, without a constitution. And every constitution, even the depraved one, remains a constitution if what it determines is observed. However, justice is only based on legality when the law is established not for a few, but for the good of the whole city. On the contrary, when laws are poorly formulated or made in haste, justice is not instituted, but the legalization of injustice is.

Good constitutions establish justice without reserve, because in this case they aim at the common good. In flawed constitutions, laws can only be relatively just, because they are diverted from their purpose, serving the particular interest of some (BODÉÜS, 1999, p. 71-82). But when laws create and ensure the conditions of good living, that is, when they are just according to natural justice, as proposed by Aristotle, they are actually aligned with the notion of justice shared by society. According to Aristotle, the rectitude of laws or the function of laws in the constitution should require citizens to behave in a way that has the virtuous man as a model. Good legislation is concerned, above all, with the virtue and vice of the citizen.

*It must, therefore, order the laws according to the good of the city. For this reason, even today, it cannot be denied that they refer to acts of virtue such as courage, temperance, etc., which are the moral virtues. But they must also favor the flourishing of the dianoetic virtues, that is, episteme or scientific knowledge, *tekné* or art, *phrónesis* or practical wisdom, *noûs*, or intuitive reason, *sophia* or theoretical wisdom.*

Therefore, for Aristotle, the content of legal justice has a deep correspondence with the virtue of justice. Hence the law, rightly established, is just, because it ordains in a particular way what is ordained in the moral virtues. So that if citizens act as the law prescribes, they only do what they already possess by habit. In this case, action according to the law is always just, because it requires the same acts that the virtues require.

Justice corresponds to the prescribed laws, so they show people how to behave according to the morality of the city (ARISTOTLE, 1856, V, 1130 b, 22-24), that is, the unwritten laws. At this point, Aristotle recovers the proverb of Theognis: "justice is the sum of all the virtues" (ARISTOTLE, 1856, V, 1129 b, 30). In other words, justice is the complete virtue because the law receives the notion of right and wrong that society constructs and orders social behaviors to be in accordance with its prescriptions. Since this demand is very broad, only the virtuous citizen can respond to it, that is, live to each social demand in accordance with virtue. For this reason, in an inverted way, it is said that the law is the complete virtue (ARISTOTLE, 1856, V, 1130 b, 6; 18-19 ; 23:25). Since then, virtue is not

only the architectural virtue of the soul, but is recapitulated in social and political relations. Thus, the virtue of justice favors social relations and necessarily preserves all virtues in itself.

Justice as legal justice is the "complete virtue par excellence", that is, an action exercised in the face of the other for the good of him, of the community and for the good of the agent of justice himself. Justice, then, does not consist in knowing all the virtues that the law commands, but in practicing them. In this case, he who practices justice to himself is virtuous and he who is unjust to himself is vicious; However, just or unjust is the one who performs just or unjust acts to his neighbor. Therefore, justice can be affirmed as virtue in its entirety and injustice as vice in its entirety.

It is then perceived that justice and virtue are complementary entities, although they originate from the same source: the hexis, the habit. Justice is the habitual state of character in relation to the other; virtue, on the other hand, is an inner condition that reflects character. Thus, justice and virtue are one and the same thing, but while the former aims at the other, the latter aims at interiority.

The law sets the guidelines for legal behavior and people are expected to behave in accordance with them. But the laws of the city are not enough if the inner law that comes from *Paideia*, education, is lacking, which will introduce the person to the *ethos* of the community. In this process, he learns to love and respect his tradition, but in a critical way. The result may be a person who, having internalized the *ethos* of the community, is happy to respect the laws, as long as they are fair. This perspective appears in Salgado precisely:

From the perspective of a philosophical reflection on its reality, law is an ethical totality that develops historically and phenomenologically as a full ethical realization or as the last moment of the ethical process, that is, as the realization of freedom in its subjective and objectified form, norm right and subject right, from man in the form of the Greek citizen [...] This procedural rationality is, in the same way, at the moment of objectified freedom or of the norm, as occurs in the awareness of the legality of the highest values of Western culture, of their declaration as rights and of their effectiveness (SALGADO, 2006. p. 3).

In addition to its normative function, the Aristotelian *nomos* can be understood as a formative device that acts in the constitution of the subjectivity of citizens. By prescribing behaviors and sanctioning deviations, the law not only externally regulates actions, but contributes to the internalization of shared ethical standards, operating as a mediation between community *ethos* and individual action. This understanding allows us to bring Aristotelian reflection closer to contemporary debates on the symbolic efficacy of norms and on the processes of internalization of legality, in which the formal validity of the law is insufficient when dissociated from subjective provisions capable of recognizing it as

legitimate. Thus, *nomos* reveals itself not only as a juridical instrument, but as a constitutive element of ethical and social life.

This understanding of the law as an expression of a shared ethos allows us to bring the Aristotelian conception closer to contemporary debates on the legitimacy and effectiveness of law. As Paul Ricoeur observes, justice is not reduced to formal conformity with the norm, but requires ethical and institutional mediations capable of articulating legality and mutual recognition, which replaces subjectivity at the center of legal normativity (RICOEUR, 2008). In a convergent way, Amartya Sen criticizes excessively abstract models of justice and argues that the validity of norms depends on their ability to respond to concrete contexts of life and to real experiences of injustice (SEN, 2011). This approximation reinforces the Aristotelian thesis according to which the *nomos* is only fully realized when it finds resonance in the ethical dispositions of citizens.

But how does the internalization of the *community ethos* occur? This is what we will see next.

2.2 HEXIS

The just act can only come from a just person. In the "Nicomachean Ethics", this procedure is supported by a disposition, ἕξις - *hexis* -, which is constructed to the extent that the person exercises himself in just actions. *Hexis* gives man the ability to perceive what is just and to act according to this perception. Through it, one has the necessary power to act justly. It is then a question of a second power, because it derives from the process of making oneself, which is proper to the practical action of Aristotelian thought. Therefore, the one who has reached *hexis* only acts according to it. Such a man may be compared to a healthy man, for just as a healthy man would not normally walk like a sick man, so a righteous man is incapable of acting unjustly. Therefore, like health that enables a healthy man to act healthily, justice enables the righteous actions of a just man.

However, each circumstance requires just actions appropriate to it. In this case, the mere mechanical repetition of justice may not carry it out, so it must be exercised according to the circumstances. If these vary, the way of acting must also change. Thus, the Aristotelian notion of *hexis* is that it is the habitual state of character and when man is in this condition, he possesses the virtue of justice because what his society sees at that moment as just and circulates within him, is what this man has become. In this sense, righteousness is the virtue of character, because it stems from habit and practice. Therefore, it is not to be confused with the power that someone special would exercise, and it is also not to be confused with the

episteme of justice, as the Socratic tradition defends. In other words, Socrates assumed that if someone knows what is just, he will practice justice. Opposing this idea, Aristotle says:

Undoubtedly, the pure knowledge [20] of beautiful things is already a very significant choice in itself; but for virtue, the essential and most precious point is not to know its nature; it is to know how it is formed and how it is practiced. We must not only know what courage is, we must above all be courageous; neither what righteousness is, but to be just; Similarly, we want health, rather than to know what it is; and to possess [25] a good temperament, but than to know what a good and robust temperament is (ARISTOTLE, 1856 [C], I, 5, 216 a, 18).

The Aristotelian notion of *hexis*, understood as a disposition incorporated through the repetition of actions, finds resonance in contemporary sociological analyses on the formation of practical schemes of conduct. Pierre Bourdieu, in developing the concept of *habitus*, describes similar processes of internalization of normative structures that guide perceptions and practices without the need for explicit coercion (BOURDIEU, 2007). This convergence allows us to understand justice, in Aristotle, not only as conscious adherence to the norm, but as an incorporated social practice, which reinforces the formative dimension of law and its dependence on educational and cultural processes.

It is then known that it is not enough to know justice, to be fair, it is necessary to practice. For this reason, Aristotle defines the just act as "[...] those acts that tend to produce and preserve, for political society, happiness and the elements that compose it" (ARISTOTLE, 1856, V, 1129b, 15). In this sense, justice is for this man the complete virtue "because it is the current exercise of complete virtue", that is, the idea of justice that his society has achieved and preserves in its history, both on the legal and moral levels. But it is also the particular virtue, because it is the human conquest of this man in the face of his *hybris*, in other words, that instinctive force that leads man to practice folly.

The virtues are of two natures. Intellectual virtue generally derives from systematic teaching, so it demands a lifelong learning process under the aegis of an advisor. Moral virtue, in turn, derives from habit: "It is not, therefore, by nature, nor contrary to nature, that virtues are generated in us. Let it be said rather that we are adapted by nature to receive them and become perfect by habit" (ARISTOTLE, V, 1103a, 20). Aristotle reserves the concept of mediocrity for the moral virtues: "[...] virtue must have the attribute of aiming at the middle ground. I refer to moral virtue, because it is that which concerns the passions and actions, in which there is excess, lack and a middle ground" (ARISTOTLE, V, 1106b, 15).

In this case, the inevitable question arises: how to know if a man is intellectually virtuous since this is not identified by mediocrity as the moral virtues are? The answer lies in the role that reason plays in the passion and its fulfillment by the body. It is she who gives the

right measure of all virtuous actions. This is his virtue. But if it does not adequately fulfill this function, then it is a vicious reason. For this reason, Aristotle states that "it is right reason that sets the middle ground of dispositions of character." This is his virtue because in Aristotelian ethics "the virtue of a thing is relative to its proper functioning" (ARISTOTLE, V, 1139a, 15).

To be intellectually virtuous is to have the ability to continually order one's dispositions of character according to the communitarian ethos. According to Aristotle "[...] the reasoning must be true as the desire is right for the choice to be right, and the second must seek exactly what the first affirms" (ARISTOTLE, V, 1139a, 25). The efficient cause of action is choice, and the efficient cause of choice is desire and reasoning with an end in view. What helps man on the path of virtue is, in part, the set of virtues and actions that correspond to them: "[...] man's virtue will also be the disposition of character that makes him good and that makes him perform his function well" (ARISTOTLE, V, 1106a, 20). Add to this the capacity for discernment and the implementation of appropriate behaviors in the face of different situations. Therefore, although the communitarian *ethos* points to a general framework of behaviors to be expected in specific situations, it stimulates virtuous behaviors by rewarding them with honors and demonstrates its indignation with vicious behaviors, in the last instance, it is only up to man in full possession of his freedom to achieve *eupraxia*, that is, his own excellence. (ARISTOTLE, V, 1105b, 10).

Since virtue is the result of the rational orientation of passion towards a mediocrity in which lack and excess are overcome by the discovery of the point of equilibrium, its acquisition is the result of continuous exercises in just actions (ARISTOTLE, V, 1103a, 30).

Therefore, also in the virtues, man is the father of his actions as he is of his children. It is in the repetitive friction between impulses and reason that character is forged. To the extent that one is determined and disciplined and puts the passions in the way of virtue, then gradually one becomes virtuous:

We take it for granted, then, that virtue has to do with pleasures and pains; that, by the same acts from which it originates, it is both increased and, if such acts are performed in a different way, destroyed; and that the acts from which virtue arose are the same in which it is actualized (ARISTOTLE, V, 1105a, 15).

The virtuous man can fall into vice as long as he relaxes in discipline and relapses into vicious behaviors. This is because virtue is associated with practical life (ARISTOTLE, V, 1103b, 10-25).

In this case, one must act virtuously all one's life, because otherwise virtue can make a man who was once virtuous. According to Aristotle, "[...] it is in the nature of these things to be destroyed by lack and excess [...]" (ARISTOTLE, V, 1104a, 10).

Aristotle observed that most people are more listeners than active. They think that only by listening do they become virtuous people (ARISTOTLE, V, 1105b,10) so they do not pay attention to the quality of their acts and are naïve about the origin of their character. But, as one who has already conquered this existence limited to himself, the virtuous man, to the extent that he continues to exercise himself in virtue through virtuous actions in his community, moves towards the good life: happiness.

In short, virtues are "dispositions of character" that are acquired through long apprenticeship. It is through discipline and determination that a man becomes virtuous. Virtue in the moral sphere is mediocrity and in the *dianoetic* it is right judgment. Therefore, virtue stems from an act of freedom, however, it must take into account the communitarian *ethos* because it was built through a long process in which previous generations, through painful experiences, selected a range of virtues and vices to facilitate future generations access to happiness without having to discover, from my own experience, all over again. But even so, the crucial challenge of virtue remains, that is, not to err by lack or excess, but to find its just measure in each case. Therefore, the crucial task of reason is to find the median of impulse. From this equilibrium, or from its lack, virtue and vice arise, respectively.

The notion of *hexis*, understood as a disposition acquired by the repetition of actions, allows us to interpret justice not as mere intellectual adherence to the norm, but as a practice incorporated into the subjects' way of acting. This conception anticipates central problems of contemporary social theory, especially those related to the formation of practical dispositions and the daily reproduction of normativity. By emphasizing that justice depends on consolidated habits, Aristotle shifts the focus from legal coercion to ethical formation, indicating that the stability of legal institutions is directly linked to the quality of educational processes and the social practices that shape the character of citizens.

2.3 HYBRIS

ὕβρις is a Greek word that transliterates as *hybris*. It is the immeasurable impulse in which desire overcomes reason and the person, in order to satisfy it violates the laws of the city. Just as the just act proceeds from the just man, so the unjust act proceeds from the unjust man. The unjust reached this condition because by constantly acting against the law, he built up a disposition of character, which since then, makes him desire what is unjust, what violates the law of the city. He does this driven by greed and with that, he seeks his pleasure to the detriment of the collective happiness that the laws seek to safeguard. In injustice, man seeks his own good by doing evil to others. With this, he becomes improper. It is unjust and, at the same time, to the extent that its acts create the idea of injustice, the unjust, vicious act

is complete injustice. This force that leads human beings to act outside the community norm is *hybris*.

Impulses belong to the body. These, of course, aim at pleasure and avoid pain. Because they are directed exclusively to their satisfactions, impulses participate in the "appetitive principle" of the soul and can be defined as the primitive stage of desires. Consequently, they are opposed to reason, however, not altogether because they can be persuaded by it (ARISTOTLE, V, 1103a, 30). It is in the mediation of the relationship between impulse and reason that the intellectual virtues (philosophical wisdom, understanding and practical wisdom) and moral virtues (liberality, temperance, etc.) are situated.

Aristotle called impulses passions. These, in turn, are generally morally neutral, that is, they are neither vices nor virtues in themselves. They will only move to these conditions after being submitted to the sieve of personal decision within the horizon of the *communitarian ethos* (ARISTOTLE, V, 1107a, 15). They can be defined as the forces, socially recognized, that move man towards the satisfaction of a desire with a view to pleasure. In this they are distinguished from vices and virtues because: "[...] with regard to virtues and vices it is not said that we are moved, but that we have such and such a disposition" (ARISTOTLE, V, 1106a, 5).

Impulses are desiring forces aimed at pleasure, passions are socially recognized impulses. Thus, in a broader perspective, impulses and passions are synonymous. What seems to differentiate one thing from the other is that pure impulses would still be in a nameless condition, that is, they do not yet have social recognition, which is why they are generically called impulses. But when they receive a name, lasciviousness, for example, they become a passion, that is, a socially recognized impulse. When an impulse is given a name it is passion, before that it is only impulse because it has not yet been identified by the culture. Pleasures and pains are linked to passions, so man moves in the world according to the principle of pleasure. These dynamize and actualize man's actions in the world and, therefore, can condition behaviors both virtuously and viciously.

Salgado, in the three conferences given in 2012 at the Faculty of Law of the University of São Paulo, namely: Greek culture: the discovery of reason; II- Theoretical reason as a measure: science and truth; III- Practical reason: ethics and reason as a measure, affirms the logocentric tendency of Western reason. The general title of the conferences translates the clash of objectivity with subjectivity clearly: "The spirit of the West, or reason as measure". Salgado translates the dialectic of subjectivity and objectivity, as follows:

So, here appears the first important theme of society, power and, on the other hand, the perversion of power, of course. The perversion of power is arbitrariness and

violence. It is the excessive. For the Greek, it is tyranny, the loss of the freedom of a people, of its autonomy, that is, the loss of the power to make its own laws, to draw its own limits, because the power of reason, which is one *we*, is alienated in the arbitrariness of an *I*, of a single one. The *we* is the moment proper to reason, which carries within itself a whole dialectical process involving the consciousness opposed to its exterior, to the object, by the consciousness of itself, always as an opening to the object until the consummation of a *we*, which is also an *"I"* as Hegel describes in the *Phenomenology of Spirit* (SALGADO, 2012, p. 44)

In the intrigue between subjectivity and objectivity is, according to Aristotle, the desire for pleasure and the escape from pain. Consequently, there is an intricate relationship between pleasure, pain and moral life, and it is as a result of the resolutions within these instances that man approaches or distances himself from happiness. This close relationship between pleasure and pain and its implications in the moral life can be seen throughout Aristotelian ethics. Listen to Aristotle:

[...] Moral excellence is related to pleasures and pains. It is because of pleasure that we do evil deeds, and because of pain that we abstain from noble actions. That is why we should be educated in a certain way from our youth, as Plato says, in order to delight in and suffer from the things that should be the cause of delight or suffering, for this is the right education (ARISTOTLE, V, 1104b, 5, 10).

It seems that for Plato it is not only pleasures that lead to a profitable end, pains also do this. Therefore, it is necessary to distinguish between pains that are totally harmful and pains that lead to pleasures. Only an education conscious of these nuances can educate effectively because it makes the organic automatism that pleasure does not bring pain and that pain does not bring pleasure would then be overcome by education.

The Aristotelian conception of pleasure was confronted with three opinions current in his time: 1) no pleasure is a good because, among other things, the temperate man avoids pleasures; 2) most pleasures are bad because pleasures are harmful and vile; 3) even if all pleasures are good, the best thing in the world is not pleasure because "[...] this is not an end, but a process" (ARISTOTLE, V, 1152a, 10-15). For Aristotle, these premises do not deprive pleasures of the value of good because: 1) goods considered evils can be chosen or rejected; 2) there are goods that involve neither pleasure nor pain; 3) pleasure is an activity of the natural state, it is not a process (ARISTOTLE, V, 1152b-1153a). Therefore, man's action is composed of two inseparable sides. Pleasure and pain. The first is sought; the second, it is avoided. Both can be physical or mental.

Pain is a feeling of displeasure, which, depending on the intensity, will provoke reflex reactions in the body. By virtue of continuous experiences, man accumulates a preventive knowledge of what can cause him pain and, therefore, avoids it. Passion, on the contrary, is

the force that moves man to pleasure and manifests itself in multiple ways. It is in itself neither vice nor virtue. It will only be so if the limits that define something as virtuous or vicious are crossed. What helps in distinguishing between pure passions and vicious or virtuous passions is the capacity for decision. Therefore, one must distinguish between "voluntary and involuntary action." If man acts out of ignorance of the limit or coerced, we have the latter. In the voluntary one, on the other hand, the man acts consciously. In this case, he was seduced by his desire. *A priori* this is neither good nor bad (ARISTOTLE, V, 1110a, 1110b, 15).

When it comes to violent passions, Aristotle states that "[...] irrational passions are not considered less human than reason; Consequently, even the actions that proceed from anger or appetite are actions of man. It would be strange, therefore, to treat them as involuntary" (ARISTOTLE, V, 1111b). It is precisely in the realm of choice that the possibility of vice or virtue lies, because man makes himself by doing.

Pleasures are physical and/or mental sensations that promote a sense of well-being. The pains, on the contrary, of malaise. However, pleasures can be bad and pains can be good and vice versa. Aristotle understands human behavior as an integrated articulation between the psychic and the physical. Impulses or appetites propel the body towards satisfaction and it is up to reason, in harmony with the community *ethos*, to put a profitable end to impulses both on the individual and social levels. Continuous, voluntary and conscious praxis makes a man virtuous or vicious.

Vices and virtues come from the same source: impulses. So, how and when does a passion become an addiction? This occurs when the passion executed does not reach the right measure. It is clear that this evaluation does not come from the one who practices the vicious act, but from the one who evaluates it from the horizon of the *community ethos*. Thus, when someone externalizes a passion, he runs the risk of doing so below or beyond the just measure because he aimed solely and exclusively at the satisfaction of his appetites. Whoever acts in this way violates the rights of others, therefore, destabilizes the community to the extent that he attacks its symbolic universe.

In Aristotelian logic, vices are the extremes of virtue: "[...] vices either go too far or fall short of what is convenient with regard to actions and passions [...]" (ARISTOTLE, V, 1107a, 5). From this it follows that it is easier to be vicious than virtuous because vice can be achieved in different ways and at different points in the extremities of passion. Therefore, it can be deduced that being vicious is the result of decisions. Vices are acquired voluntarily and deliberately. A person is not vicious, he makes himself.

Man becomes vicious or virtuous after deliberately repeating behaviors for a long time. In this way, they automatically integrate into the character. It is perceived that "man is the

father of his actions as he is of his children" (ARISTOTLE, V, 1114a20) and, therefore, on the moral plane, the parent of himself.

However, it may be that a person does not want to be vicious, but that this occurs due to an error of judgment. Now, like the virtuous man, it seems that the end to which the vicious man has in mind when he engages in vicious acts is happiness. But he does not find it because these, at first pleasurable, become painful to the extent that they are outside the standards of virtue of the *communitarian ethos*. Hence, the importance of education so that people can discover the appropriate means to be happy and contribute to the happiness of the community. It is in this context that the value of the *community ethos* emerges. The community's standards of behavior have been sanctioned after a long process of mistakes and successes, so they are vital to the community. If violated, the entire group is at risk. Therefore, the offender must receive in himself the punishment resulting from his fault. In this context, to become virtuous is to strengthen one's own community so that everyone enjoys the good life. On the contrary, to become vicious is to deliberately place oneself at the mercy of pure pleasure and to violate the *community ethos*. This puts at risk everything that the community has achieved so far. Therefore, the pleasurable vice in the beginning is, in the end, self-destructive because if one justified it because of the right to one's freedom, one would necessarily have to extend it to others, and a community where all desires were satisfied without objective ethical criteria would lead the group to dissolution.

In the context of Aristotelian ethics, when someone chooses to be vicious, it is forever. When one exercises in vice, the impulses are markedly strengthened and dispose the character in that direction, so according to Aristotle, no reconditioning is strong enough to re-educate him:

But when, without being ignorant, a man does things that will make him unjust, he will be unjust willingly. [...] at first it depended on them not to become men of this kind, so that it is by their will that they are unjust and intemperate; and now that they have become such, it is not possible for them to be different (ARISTOTLE, V, 1114a, 20).

Therefore, deliberately indulging in vices is not proper for adults, but for children. These, depending on their age, live driven by the search for pleasure and the avoidance of pain without the mediation of reason. The child's exclusive interest is pleasure, any frustration leads to crying because he is not yet mature enough to bear the frustrations. Similarly, the vicious man is still childish because he perceives and acts exclusively for pleasure:

These characteristics (referring to intemperance) belong above all to the appetite and to the child, since in reality children live at the mercy of appetites, and in them the

desire for pleasant things has more strength. If they are not obedient and submissive to the rational principle, they will go to great extremes, for in an irrational being the desire for pleasure is insatiable, although it experiences all the sources of satisfaction. Moreover, exercise increases his innate strength, and when the appetites are strong and violent, they go so far as to exclude the faculty of reasoning (ARISTOTLE, V, 1119a, 10).

What is expected of a wise man is that he manages his passions well in order to put them at the service of community life. At this time, the passions became virtues and now guided by right judgment:

[...] the appetites must be few and moderate, and not in any way opposed to the rational principle—and this is what we call obedience and discipline. And just as the child must submit to the direction of his preceptor, so the appetitive element must be subordinated to the rational principle (ARISTOTLE, V, 1119b, 15).

The harmony between impulses and reason is the fundamental principle of virtue and the path to happiness.

Vices are the two extremes of virtue, they proceed from impulses and result from errors of judgment as to satisfaction. They are voluntary and definitive, and it is proper to a childish character. The virtues, in turn, result from the correct management of impulses, so they are the middle ground of vices and are characteristic of wise men. While vices erode the *community ethos* and can lead the community to destruction, virtues strengthen and preserve it.

Having examined the triad *nomos-hexis-hybris*, we move on to the second triad of Aristotelian thought: *arete-diké-adikia*, respectively, virtue-justice-injustice.

3 ARETÉ-DIKÉ-ADIKIA

The Aristotelian triad *arete-diké-adikia*, respectively means virtue-justice-injustice. Law and Subjectivity are linked by the nature of the just or unjust actions of people in the community.

3.1 ARETE

ἀρετή, is a Greek word that transliterates into Portuguese as *Arete* and means virtue. This can be ethical, relative to correct behavior, and *dianoetic*, relative to right judgment. The virtues are "dispositions of character" (ARISTOTLE, V, 1106a, 10) related to choice. Its proper place is mediocrity. This central point is determined by reason, and a man endowed with practical wisdom finds it more easily (ARISTOTLE, V, 1107a, 5). Mediocrity is not predetermined by any determination external to the person, because for Aristotle it is man

who will choose, on each occasion, this appropriate place of virtue. Therefore, "the mediocrity is relative to us." From this it follows that "with regard to its substance and the definition that establishes its essence, virtue is a mediocrity; with reference to the supreme good and the just, it is, however, an extreme" (ARISTOTLE, V, 1107a, 5). Virtue is a disposition of character that is related to "[...] that makes him good and that makes him perform his function well" (ARISTOTLE, V, 1106a, 20).

Mediocrity is the excellence of virtue. It results from the overall action of the organism: the passions are guided by right reason. This means not excessively limiting your strength or giving you too much space. Desire is responsible for desiring, the body is responsible for feeling, reason is responsible for guiding. The interpretation of the reason of the desires of the body and of the *communal ethos* must take into account that every passion has the appropriate time, place and circumstances. These variables, when considered, are the fundamental conditions for practicing a virtuous action.

The understanding of virtue as median guided by practical reason allows us to articulate Aristotelian ethics with contemporary reflections on social normativity and the formation of subjectivity. Axel Honneth points out that the ethical dispositions of the subjects constitute contexts of intersubjective recognition, in which values and social expectations shape the self-understanding of individuals (HONNETH, 2009). From this perspective, *the Aristotelian areté* can be interpreted as a form of embodied ethics, whose realization depends on social practices that promote the recognition and integration of the subject into community life.

The object is the other aspect to be considered. It must be appropriate to that passion. If there are other people involved, the passions must be focused on the right people. That said, one must consider the convenience of the motives that are presiding over the action and whether the mode of satisfaction of desire is appropriate (ARISTOTLE, V, 1106b,20). Therefore, ultimately, the *community ethos* is the parameter of just actions. These are guided by the just rule. Aristotle, realizing the unstable nature of actions, stated that it is people who must decide on a case-by-case basis the most appropriate action in each situation:

As with health, questions of conduct and what is good for us have no fixity [...] people themselves must consider, in each case, what is most appropriate to the occasion, as is also the case in the art of navigation and medicine (ARISTOTLE, V, 1104a, 5).

The rational administration of desire leads to a virtuous act and, later, to a virtue (ARISTOTLE, V, 1119b, 20). The challenge of the moral act is to situate itself in the mediocrity of the action (ARISTOTLE, V, 1106b, 25). Excess and deficiency are the great adversaries of

just action. Consequently, the chances of making a mistake are greater than of getting the median of a stock right. For this very reason, lack and excess characterize vices and mediocrity, virtues. Aristotle states that one does not arrive at the median in a single action. But one makes mistakes today in order to get it right tomorrow: "It is quite clear, then, that in all things the middle ground is worthy of praise, but that sometimes we must incline to excess and sometimes to deficiency. Indeed, this is the easiest way to reach the middle ground and what is right" (ARISTOTLE, V, 1109b, 20).

Eupraxia is a lifelong task (ARISTOTLE, V, 1105b) and is more related to the other than to oneself. Therefore, "the best of men"[...] it is not the one who exercises his virtue towards himself, but towards the other. For what a difficult task this is" (ARISTOTLE, V, 1130a, 5). Men have all these things in common, and it is in the way they manage these inner forces that they will be more or less human. This is a complex and demanding task. Thus, according to Aristotle, one must have a certain natural inclination to virtue: "it is, therefore, an indispensable precondition for the existence of a character that has a certain affinity with virtue, loving what is noble and detesting what is vile" (ARISTOTLE, V, 1179b, 30; 1106 a, 30).

By understanding virtue as median guided by practical reason, Aristotle provides an ethical criterion that goes beyond normative rigidity and adapts to the complexity of concrete situations. This conception is particularly relevant for contemporary legal reflection, as it problematizes excessively abstract normative models and highlights the need to consider contexts, circumstances, and social relations in the evaluation of justice. Virtue, in this sense, is not only an individual quality, but a relational principle that manifests itself in political coexistence and in the search for balance between different interests.

3.2 DIKÉ

When one turns to the context of the "Nicomachean Ethics", one realizes that justice in Athens has a prominent religious force. Aristotle values it, however, he takes it only as a starting point since, on the philosophical level, he vetoes the extra-human interpretation of justice associated with the goddesses *Θέμις* - Themis - and *Δίκη* - Diké - (SAINT-ARNAUD, 1984, p. 158). He chooses to examine it in the actions of the people and in the adequacy of these actions with the law of $\square\square\square\square\square$ - *polis* -. Therefore, it cannot be denied that the understanding of justice in Book V, of the "Nicomachean Ethics", requires that one understand the notion of justice that prevails until then. Without this, one can even recognize Aristotle's originality, but one will have lost the opportunity to identify the other face of justice, the divine one with which he struggles.

According to Greek mythology, the goddess Themis, daughter of Uranus and Gaia, is the goddess of Justice, Law and Equity. In legal iconography, she is represented with a scale, a sword, and usually with a blindfold over her eyes. The scales serve to "weigh" the balance of the cosmos; the sword, the power to punish those who are out of their place and the blindfold over the eyes symbolizes the impartiality of the decision (GRIMAL, 1997, p. 435). However, Themis represents transcendent justice, that is, that which does not pass through judicial mediation. In the classical Western tradition, this points to the religious origin of justice. It means that, according to the myth, Themis punishes those who introduce disorder into the order of the world, that is, they place themselves in a place that is not their own. This is one of the possible interpretations of the famous phrase "know thyself", placed at the entrance to the Temple of Delphi. It follows that ὕβρις - *hybris* -, immeasurability, is the origin of chaos and of various forms of *adikia*, of injustice (FISCHER, 1992).

For this reason, the myth of Themis helps to understand that the first function of justice is to prevent the excesses of *hybris*, because man only escapes from them by remaining in his own place. If one is seized by some uncontrollable impulse and violates the law of the city, justice is simple and straightforward because it aims only at the restoration of the order of the world. Themis does not take into account the guilty's motives or his repentance. Therefore, it gives the legitimacy of justice, that is, it justifies the punishment imposed on the offender by the Erineas, the goddesses of vengeance (LÉVÊQUE; FESTUGIÈRE, 2011).

In the evolution of Greek justice, it is a moment prior to legal justice, because it is not possible to speak, until then, of the juridical sense of justice. But it is legitimate because it stems from the will of Themis. Therefore, justice often has no human mediator. It is "fate" itself that is responsible for punishing the guilty in answer to the prayer of the wronged:

I invoke Themis, the chaste daughter of Uranus, born of illustrious parents, Gaia's Generation, a virgin with beautiful eyes, who, first, reveals to men the sacred prophecies and oracles of the Gods in the Delphian temple and who also reigns over Pythius and the Pythians, and who gave King *Phoibos* the power to deliver oracles. O Illustrious, honored of all, who wanders in the night, you first taught men the sacred ceremonies and the nocturnal feasts of *Bakklos*. It is from you that they see the mysteries of the Blessed and the honors given to them. Come, O Blessed One, and be propitious, O Virgin, to those who are initiated into your mysteries (CALLIES, 2006).

The myth of Themis gradually gives way to the goddess Diké, whose mission is to watch over the actions of men, punishing or rewarding them. In this way, the justice of the city that is legitimized in the goddess Themis, achieves legality with Diké. Now the divine is closer to the human. Law is embodied in judicial institutions.

In the case of Athens' democratic justice, it can be said that positive law and natural law form a unity in which divine law has primacy. Therefore, tension, instead of bothering the jurist, is the ingredient that stimulates and qualifies his ability to judge. Hence follows the equity of justice. An equitable justice takes into account the particularity of individuals and contexts. It is not the strict application of the letter of the law, because it aims at legitimacy, in addition to strict legality (LALANDE, 1999, 605-606).

Δίκη, Diké, is the daughter of Zeus and Themis (HESIOD, 2007, 900-901), also known as Astreia, the goddess of the stars, and as *Dikaiosyne*, the spirit of justice. In Greek mythology, Diké is the goddess of Justice. However, unlike her mother, Themis, who watches over the cosmos, is more interested in men's issues. So he goes down to be with them. Diké opposes *Adikia*, that is, the spirit of injustice and wrong actions (SMITH, 2005, p. 1002).

According to the myth, the goddess approaches the throne of Zeus with lamentations when a judge violates justice (HESIOD, 2007, 239). The goddess strives to settle the differences and conflicts between men by indicating to them the means of conciliation. Therefore, it becomes the symbol of justice. However, not the cosmic justice of Themis, but that carried out by the judge, who is the one who humanizes the city by applying justice. Diké, according to Hesiod (1996), appears in the world of men as the principle that should guide the social order. This is also the position of Évelyne Scheid-Tissinier: "the diké is consequently presented as the element that ensures the management of the mechanisms that regulate human relations, as opposed to themis, this law imposed from above and that imposes respect" (2008).

Therefore, in the myth of Diké, the divine and the human make up a unity. The myth helps to see the process of change in Greek society. As society becomes more complex, the goddess of Justice descends. From there, one can speak of the immanence of justice, but preserving the link with transcendent justice. For this reason, legal iconography represents Diké without a blindfold. The open eyes symbolize the need to look beyond the immediate evidence of the facts and the scale is the sign of isonomy (FERRAZ JÚNIOR, 2003, p. 32-33). These two aspects of justice seem to indicate that Diké is at the same time a general justice that encompasses all the virtues, expressing itself as *δικαιοσύνης* - *dikaiosine* - and is also the archetype of particular justice.

From the sixth century B.C. onwards, the Greeks will strive for a justice that, while preserving its divine matrix, will gain more and more participation of human intelligence to enforce itself. The word diké means custom, use. The goddess Diké is the embodiment of this concept. It is known that "custom" and "usage" recapitulate the positive experiences of the community in view of the common good. Diké is the personification of the values of the

polis, which is why she is recognized as the goddess of justice "from below", of the city, in continuity with the justice "from above", of Themis. Diké takes care of the justice of men that is concretized in the laws and trials that take place in the city of Athens (CALLIES, 2011).

It is known today that customs are changing as a result of the anthropological character of their origin. But in the mythical period, customs are considered gifts from the gods. To violate them is to go against the will of Themis and Diké. Legitimate justice, which according to the myth comes from above, finds its counterpoint in the legality of justice received in the laws of the city. Diké inspires legal, positive, state justice. She is a companion of the righteous and opposes the unjust. It is to her, as the guarantor of isonomy in the courts of Athens, that the wronged will first appeal:

I invoke the beautiful Diké who sees the multitude of things and who sits on the throne of King Zeus, following from the heights of Heaven the life of men in various races, punishing iniquity and eliminating everything that is different from the truth. It judges the wicked actions that iniquity inspires in men, when they want to carry out unjust projects. She is the enemy of the wicked, but she is the friend of the good. O Goddess, welcome our invocations, until the fateful end of our life (CALLIES, 2006).

In the light of Themis and Diké, the peace of the city comes from equitable decisions in the face of the difficult balance between the just and the unjust. From the human point of view, it is always an option for virtue, which is perpetually threatened by *hybris*, like a kind of shadow that lurks in all noble actions.

3.3 ADIKIA

Adikia is a Greek word meaning injustice. To deepen the paronymy (ANDRADE, 2009, p. 59) between justice and injustice, Aristotle observes that one can speak of a general and particular injustice. General injustice is composed of illegitimate and improper. Illegitimate is that which is outside the law. However, Aristotle points out that not everything that is outside the law is unjust, although it is illegitimate. On the other hand, the improbable is the one who breaks the law and promotes inequality. Therefore, every improbable person is unjust and iniquitous at the same time (ARISTOTLE, 1856, V, 3, 1131 a, 10). This Aristotle calls private injustice. For this conceptualization to be accurate, it is necessary that the law reflects the communitarian ethos (ARISTOTLE, 1856, V, 2.1130 b, 20), because if it were the law of a tyrant, it would already escape the theory. As Cournarie says, "an action in accordance with the law is only just if the law is just or more precisely if it is admitted that the law has, by itself, the power to make justice happen" (COURNARIE, 2007, p. 13). Thus, it is not the law that is the measure of justice, but justice that is the measure of the law, that is, no

longer any natural, universal and abstract right, but the law in its rectitude as a law, according to its function and purpose, which is the realization of the common good.

The appreciation of justice, says Aristotle, passes through the consideration of injustice:

But be that as it may, the object of our investigation is that justice which constitutes a part of virtue; for we hold that such a kind of justice exists. And analogously, it is with injustice in the particular sense that we are concerned (ARISTOTLE, 1856, V, 2, 1130a, 15).

In addition to natural justice, legal justice corresponds to the objective law of the city. This, according to Aristotle, means that:

In the dispositions which they make on all matters, laws have in view the common advantage, whether of all, or of the best, or of those who hold power, or something of that kind; so that, in a certain sense, we call justice those acts that tend to produce and preserve for political society, happiness and the elements that compose it (ARISTOTLE, 1856, V, 1, 1129b, 15).

This established law generates the subjective rights, that is, those that citizens can claim in the city's legal institutions by reason of the law. In this way, a citizen does justice to himself or to others when he corrects, by force of law, the injustice suffered. To do so, he will have to provoke the city's judicial institutions. It can be said that this is the common sense perception of what justice is. It is therefore a question of univocal understanding. In that case, the one who acts according to the law will be just and the one who violates it will be unjust. *It seems important to evoke Thomas Aquinas in the "Summa Theologica" here. Aquinas says that justice aims at the common good (2008, q. 58, art. 5). It can be said then that justice is a civil virtue par excellence and, therefore, total and legal.*

4 DIKAIOSINE-DIKAION-DIKAIOS

The dikaiosine-dikaion-dikaios *triad*, respectively, justice in judicial institutions, the justice of judicial decision, and justice of judges. Law and Subjectivity are linked by judicial institutions and the decisions of the just.

4.1 DIKAIOSINE

Dikaiosine, means justice linked to judicial institutions. Judicial institutions are expected to comply with the law, but also to do what is just. The trial of Sócrates is an emblematic case when one thinks about the justice of the judiciary. The trial of Socrates is a

select example of a conflict between the legal and the legitimate. In the "*Απολογία Σωκράτους*" (PLATON, 1903), one can see the encounter between mythical reason, represented by Meletus, Antius and Lesson and by the 280 judges who condemned it (Plato, 1987, p. 9 and 53), and philosophical reason, represented by Socrates.

A brief resumption of the clash helps to understand the influence of the mythical-religious tradition on the legal institutions of Athens and how natural law influences the laws of Athenian democracy and the conscience of the population. Athenian democratic institutions are both the places where Dike is remembered as a benchmark of justice and where Athenian citizens make laws by articulating the many interests at stake.

In 399 B.C., Meletus, Antitus, and Lecture accuse Socrates of impiety, that is, of not believing in the gods of the city of Athens: "Socrates is a dangerous man, who, out of a criminal curiosity, wants to unravel what is happening in heaven and under earth, makes impiety a good cause, and teaches others these pernicious secrets" (PLATON, 1903, 19b-19c) and "[...] corrupt the youth, not recognize the religion of the State and put demonic extravagances in place" (PLATON, 1903, 24b-24c).

The first accusation states that Socrates is an atheist and the second, that he misleads the youth. Socrates' accusers attribute his atheism to his disregard for the gods of the city in general. Meletus says: "by Zeus, lord judges, he does not believe, for he affirms that the sun is stone and the moon is earth" (PLATON, 1903, 26d). This puts Socrates before the judgment of Themis and Diké. The second accusation is against his philosophical method, irony and maieutics, which Socrates' disciples apply in everyday debates. This is seen as a perversion of youth. The third charge attacks the result of Socrates' work, which is to strengthen weaker minds. Maieutics helps non-citizens of Athens, insofar as it allows them to make the catharsis of their limitation. This leads to the destabilization of the *status quo*, because a slave can perceive himself as capable as an Athenian citizen (PLATON, 1849).

In his defense, Socrates claims not to be an atheist, but deeply connected to the *daimon* who has guided him since he was a child. In addition, his method promotes justice, because it helps people to discover their limits and potential. If Socrates owes anything, it is this: to have human science as his mission, that is, to understand the human being. This task only began because Socrates wanted to show Cherophon that the Pythia of the Temple of Delphi was wrong when she told him that Socrates was the wisest man in the world. Now, how could he be if the only certainty he has is that he knows nothing? But it seems that this is the secret of the prophecy of the Pythoness: the wise man is sure that he knows nothing, that is, every situation is a place of new learning. Socrates was convicted by thirty votes. This means that of the 501 judges, 221 acquitted him of the charges (Plato, 1987, p. 9 and 53).

In this context, Socrates could choose bail or exile as an alternative to the death penalty, but following the inspiration of the *daimon*, the good genius, he embarrasses the judges when he asks that, if acquitted, he be fed in the Prytaneum as long as he lives. The Prytaneum, home of the Pritanes, judges of Athens, is where the sacred flame to Hestia, the goddess of the family, was located. Socrates places judges before an *aporia*: the death penalty or honor for life. The judges opt for the former.

4.2 DIKAION

The Greek term δικαιοσύνη, *dikaion*, translates as decision of the just. Aristotle does not discard this understanding of justice whose nature is homonymy, that is, the univocal character that common sense gives to the terms justice and injustice. In fact, he takes it as a starting point for a more accurate understanding of justice. Consequently, the Aristotelian perception of justice marks a distancing from how common sense perceives it and gives Western reason a paradigm, still much considered today in the Philosophy of Law.

For Aristotle, the greedy is the counterpoint of the *dikaios*, of the just. Contrasting them, Aristotle realizes that while the greedy is immersed in his own injustice - *adikias* -, the just man strives for justice (ARISTOTLE, 1856, V, 2, 1130 a, 30). When the philosopher's attention is focused on the greedy man, he realizes that the particular injustice of the latter is linked to a general injustice, which is that which is contrary to the law (Aristotle, V, 2.1130a, 20) and which the historical experience of the community has discarded as harmful to it. But there is one aspect common to general and particular injustice. It is about inequality in the relationship with others.

This first approach gives Aristotle the clues that if there are two kinds of injustice, it seems possible to say the same with regard to justice (ARISTOTLE, V, 2, 1130b, 5). It is a question of general or legal justice and particular justice. They are related to virtue. Aristotle stresses, in the first place, the homonymy of both the word justice and injustice. In this way, he goes beyond the sense of justice that common sense has built and will reveal that of equivocity.

Common sense considers unjust the one who violates the law and the one who takes more than is due to him. In contrast, Aristotle understands that the just man - *dikaios* - sticks to the legal and the equal. For this reason, Aristotle applies the notion of equivocity from the word injustice to the notion of justice: "the just, therefore, is that which conforms to the law and that which respects equality; and the unjust is that which is contrary to the law and lacks equality" (ARISTOTLE, 1856, V, 3, 1131b, 15). The analogy allows us to affirm that equality

is the just means of just and unjust action. Consequently, it is exactly at this point that justice is also present (ARISTOTLE, 1856, V, 3, 1129 a, 30; 1131 a, 10-15).

Therefore, it is not only the act according to the law, but the act according to the law that promotes justice, that is, the equality of rights of citizens. *As Saint-Arnaud states: "Aristotle is the first thinker to distinguish in a systematic way legality and equality as the foundations of justice [...]" (1984, p. 161).* This definition based on the paronymic method, that is, that the 'opposites' clarify each other, e.g., the unequal helps to understand the equal, allows Aristotle to define justice not only in terms of the legal, but also in terms of the equal. To account for this last category, *Aristotle constructs the notion of particular justice and divides it into distributive justice and corrective justice (ARISTOTLE, 1856, V, 2, 1130 b, 30).*

In Aristotle, particular justice is based on the notion of equality. According to Gauthier and Jolif, the entire Book V of the "Nicomachean Ethics" is based on the distinction between two senses of the word dikaion that can mean what is legal and what is equal (GAUTHIER, JOLIF, 1970, p. 323). After defining the just relative to the laws, what is admitted and conveyed by tradition, Aristotle needs to 'demonstrate' how the just coincides with the legal. To this end, to the method of dispelling equivocations, e.g., the homonymic occurrence of *dikaion*, he adds the paronymic method by which the just reveals himself through the notion of unjust and vice versa. Aristotle's analysis of *dikaion* allowed him to distinguish two sets of 'opposites', legal-illegal and equal-unequal, for the definition of just. After having defined the legal just by the illegal, he retains the unequal for the definition of particular justice. This will allow him, through the game of opposites, to apprehend the equal and, thus, the just. Thus, he tries to define the equal as the just measure between the unequal and the just as being at the center of the extremes represented by the unjust:

Since the unjust does not respect equality and injustice is confused with inequality, it is evident that there is a fair means when it comes to inequality. This just means is equality. In actions where there is more and less, there is room for a just measure. Therefore, if the unjust is the unequal, the just is the equal. But in every action where there is more and less, there must also be a possible equality; and, consequently, if that which escapes equality is called unjust, that which is in conformity with it is just, as everyone judges without much difficulty; and since it is in the environment that equality is established, it will be there that justice will be achieved. Now, equality can only exist between at least two terms. Therefore, the just must necessarily be the means, an equality in relation to things and people, because if there is no equality between them, they should not have equal things (ARISTOTLE, 1856, V, 3, 1131a, 10-15).

4.3 DIKAIOS

Aristotelian reflection on equity introduces a decisive element for understanding the role of subjectivity in judicial institutions. Recognizing that the strict application of the law can produce injustices in particular cases, Aristotle assigns to the judge the task of interpreting the norm in the light of the concrete case, mobilizing prudence (*phronesis*) as a decision-making virtue. This conception anticipates contemporary debates on judicial discretion, practical rationality and legitimacy of decisions, indicating that institutional justice depends not only on well-formulated norms, but on the ethical and intellectual training of those who apply them.

Dikaios translates into fair decisions. Equity is a corrective of the just according to the law. In this sense, it does not proceed from the law, but from the prudence of the judge. This need arises from the nature of the legal phenomenon, which is the difficult task of adapting the general rule to the specificities of particular cases. For greater conceptual precision, we turn to Aristotle:

The difficulty is that equity, though just, is not just according to the law, but a corrective of legal justice ([ἐπανόρθωμα νομίμου δικαίου](#)). The reason for this is that the law is always something general ([καθόλου](#)), and there are situations in which this mode cannot be applied. Therefore, in matters where it is necessarily necessary to speak in a general way, and where it is impossible to do so correctly, the law takes into account only the most frequent cases ([τὸ ὡς ἐπὶ τὸ πλεόν](#)), but without ignoring the errors which this may cause. In this connection the law is no less right ([ὀρθός](#)), because the fault is not in the law, nor in the lawgiver ([νομοθέτη](#)), but has the nature of juridical phenomena, because such is the nature of practical things. Consequently, when the law speaks in a general way, and then a case arises outside the general rule, then it is right ([ὀρθῶς](#)), where the legislator cannot foresee the case, and has failed by oversimplification, to correct the omission, and to interpret what the legislator himself would have said, if he had been present at the time, and what he would have put into the law if he had known the case in question (ARISTOTLE, 1856, V, 10, 1137 b, 11-23).

Even if the quotation already brings a reasonable notion of what *ἐπιείκεια* - equity - is, that it is the "corrective of legal justice" and that it derives from the general character of the law and the dynamics of society, it is necessary to discover its nature in Aristotelian thought: is it *contra legem* or is it *praeter legem*? In other words: is it against the law or does it fill in the obscurities, the *non liquet* of the law? Or is it actually an attenuation of the harshness of the law as Cicero stated in his famous brocade: "*summum ius summa iniuria*": supreme right, maximum injury? (1843, I, 10, 33).

It seems that Aristotle leans more towards the dialectic of the norm with the concrete situation and that, obviously, neither the Caesarism of the law and, above all, the reductionism

to the concrete situation are adequate to his position. With John Hobuss (2010), it can be stated that the reductionism of equity to the imperialism of concrete situations in the face of the law, as argued by David Wiggins (1997, 2004) and Jacques Brunschwig (1996, p. 115-155), does not do justice to Aristotle. What is more appropriate to his thought in the "Nicomacheian Ethics" is that the law, by its generality, regulates the general aspects of social relations and that it will be in the face of the particular situation that the judge, taking into account the law and the singularities of each case, will decide in this or that way.

Moutsopoulos states that if the meaning of virtue is attributed to *epieikeia*, then it means "in the place of", that is, to put oneself in the place of the one who judges oneself in order to better understand it (1998, p. 195-198). This conclusion follows from the suffix *eikôn* that indicates the alternation between the true object and its image, that is, an exchange of roles. Thus, far from designating a weakness of the judge, *epieikeia* is the ability to adapt to circumstances and enables the judge to decide in a spirit of justice (BEES, 1995, p. 117-126).

According to the logic of *epieikeia*, one can speak of the precedence of the concrete case in relation to the law, but not of its disregard due to the concrete case. It is well known the resistance that the positivistic current of law has in relation to equity, since for it, the impartiality of the law must prevail in any circumstance. But, it seems to be well understood, the *Aristotelian ἐπιείκεια* is not against the law (ARISTOTLE, 1874, III, 11, 1281 b, 3-8), but its complement, because the law is naturally broad precisely to encompass the largest possible number of situations. To support the argument, Tordesillas is used:

In short, while a justice that is too formal leads to legislation without judges, a justice that is too concrete that, in the name of equity, gives full power to the judge's deliberation, leads only to a type of justice without legislation, so that a power of decision without limits is as dangerous as a justice that is absolutely regulated and excludes any decision of the judge (2004, p. 73).

For Aristotle, even if legal justice integrates and implies all the possible ethical virtues that belong to natural justice, legal justice does not have the full meaning of justice, either because natural justice surpasses it or also because society is dynamic. For this reason, being just does not consist exclusively in respecting the law, but above all, in the face of the law, in evoking the ethical-political character of justice which, beyond the legal just, turns to the just according to equality. It is about the justice that can be applied in the city (GAUTHIER; JOLIF, 1959, p. 385-386) on the natural and legal planes (MICHON, 2011, p. 9).

Equity finds its place in the dialectic of natural justice with legal justice. This is necessary, because even if one has an adequate legal apparatus, it does not work apart from legal intelligence. Through the interaction of the social and the law, justice or injustice occurs

in the city. *Epieikeia* does not allow justice to be mechanized, that is, a pure and simple application of the legal norm. The *epieikeia* recovers and maintains the just, the legal and the equal in the city and, at the same time, stands up against the unjust, the illegal and the unequal, which can occur in the reductionist application of the law (COULOUBARITSIS, In: ELST, 1985, p. 79-101).

It can be said that there is no justice where there is no political justice and there is no political justice where the authority of the law does not reign, however, the former precedes it and confers on it the possibility of existence. Therefore, the law is not justice in its entirety. The law must govern, however, this does not sacralize it because it is the just who founds the law and not the other way around (PERELMAN, 1972, p. 9-80).

To broaden the understanding of *epieikeia*, we turn to Aristotle: "we will now speak of equity and equity, and we will determine the relations that exist between equity and justice on the one hand, equitable and just, on the other" (ARISTOTLE, 1856, V, 10, 1137a, 31). If equity is the "corrective of legal justice," it does not proceed from within Athenian legislation. So, what legitimacy does it have to correct it, since it is foreign to it? Moreover, this casts suspicion on legal justice: is the law really just and good since it lacks equitable intervention in complex practical circumstances?

Aristotle's answer lies both inside and outside of legal justice. In the first case, the intention of the legislator at the time of the promulgation of the law is sought; in the second, it is supported by natural justice. Hence it may be said that equity and legal justice are not exactly the same thing, but belong to the same genus, since they both proceed from society's consciousness of justice. However, to the extent that legal justice can only appear in the law in a broad way to encompass as many cases as possible, equity updates legal justice in the face of the current demands of the city.

Therefore equity is not foreign to legal justice, because just as legal justice is posited by the human *logos*, equity also proceeds from human reason. The difference is that while the law is fixed, equity is the legal intelligence in continuous becoming, articulating the law and the complex requirements of the particular situation (BOUDOURIS, 1989. p. 129-137). For this reason, Aristotle says that the law is good, but the equitable is better (ARISTOTLE, 1856, V, 10, 1137 a, 33). However, this raises a second question: if the metaphysics of law is the just and that of equity is the equitable, can it be said that the just that the law provides is different from that which equity accomplishes?

In fact, for Aristotle, the legal just and the equitable have the same nature, but they differ in intensity, that is, the equitable of equity is superior to the just of the law: "thus, just and equitable are one thing and the same thing, both are good, even if the equitable is

superior" (ARISTOTLE, 1856, V, 10, 1137b, 10). For greater conceptual lucidity, Michon is evoked: "equity is not defined as indulgence, it is not outside the sphere of law, it is, on the contrary, the source of law, and of a higher right, because it is inscribed in nature" (2011, p. 8).

The centrality of equity in Aristotelian reflection anticipates fundamental problems of contemporary legal theory related to judicial decision and the application of the norm. Chaïm Perelman points out that legal rationality cannot be reduced to a deductive formalism, requiring judgments of reasonableness and weighting in the face of concrete circumstances (PERELMAN, 2005). In a convergent way, Neil MacCormick argues that the legitimacy of legal decisions depends on the articulation between rules, principles and practical arguments, which brings *Aristotelian phronesis* closer to modern judicial rationality (MACCORMICK, 2005). Ronald Dworkin, by emphasizing the integrity of the law, also recognizes the interpretative role of the judge in the construction of justice, beyond the mechanical application of the law (DWORKIN, 2007).

If one resorts to "Rhetoric" to seek the traits of equitable legal intelligence, that is, just according to law and equity, it will be seen that it is his own to appreciate the circumstances, he will want to know whether the action was voluntary or involuntary; he will inquire about the intention of the legislator in writing the law, he will want to know all the circumstances involved in the matter, he will be interested not in what the defendant is at that moment, but in what he was for most of his life (ARISTOTLE, 1856 [B], I, 13, 16-18), he will be attentive to the intentional and unintentional lacuna of the law. At that time, the judge will not legislate because he does not have this right, but will strive to solve the situation within the possibilities of the legal and customary tradition of the city. On the other hand, if the law is applied without taking into account these elements, it may be that the law, which was supposed to do what is just, ends up making injustice official. However, the force of the law should not be forgotten, because Aristotle advises: "one must go to arbitration before justice, because the mediator considers the equitable side of things, while the judge only considers the law, and the mediator was instituted to enforce the point of view of equity" (ARISTOTLE, 1856 [B], I, 13, 19, our translation).

It seems that justice is done to Aristotle by stating that he seeks a legal status for equity. In this case, justice would be reconciled with the legal just, not as the equal, but as its cooperator in those cases where the legal just could lead to injustice and to make the citizen unhappy in a way, at times, irretrievable. It is only in this sense that equity is superior to legal justice, because in legal operation, they cooperate in favor of justice. As Michon reminds us, "equity is just an alternative but legal form" (2011, p. 12). It is, then, corrective equity, *praeter*

legem. An effort by the judiciary in the search for justice, because "something is not just because it is law, but it must be law because it is just" (MONTESQUIEU, 1949, 1906). Thus, what is equitable precedes the legal just and helps the law when it risks slipping into injustice in its application, which would be the concern only with the legal, without considering justice. Aristotle is used to affirm the supremacy of what is equitable over what is exclusively legal:

That is why there is a justice that is preferable to rigorous justice when it comes to the particular case; not an absolute justice, but only to the just where the error related to the absolute character of the rule can be found, and this is precisely the nature of equity: it is the corrective of the law, in the place where the law has failed by reason of its generality. Really, the reason why everything is not defined by the law is that there are cases in which it is impossible for it to be applied. In this case, a decision appropriate to the nature of the case is required. Like the lead ruler that lesbians use in their constructions and that adapts to the shape of the stone, they do not retain an invariable direction. In the same way, particular decisions must be accommodated to the cases that arise (ARISTOTLE, 1856, V, 14, 1137 b, § 27-35).

Aristotle reaffirms here the necessity of equity by reason of the generality of the law. If the law is designed by the legislator to encompass a multiplicity of cases, it is natural then that, when it is linked to any legal fact, it receives the interpretation that is entitled to it. For the Stagirita, this is the place of equity in law. Therefore, equity does not detract from the law, but vitalizes it. It is known, however, that the judge is not responsible for legislating. This is the function of the legislator. Therefore, when the judge exercises equity, he does not legislate, but seeks the best way to be faithful to the spirit of the legislator. Portalis agrees with this, when in the preamble of the French Civil Code of 1804, he says:

There is a science for legislators and another for magistrates; and one is quite distinct from the other. The science of the legislator consists in finding, in each matter, the principles most favorable to the common good; the magistrate's science is to put these principles into action, to branch them out, to extend them, by a wise application [...] when the letter kills, and no longer exposes oneself to be alternately slave and rebellious, and to disobey by the spirit of servitude (2011, p. 23).

Therefore, it should not be forgotten that "the law must govern, but it is the just who founds the law" (COURNARIE, 2007, p. 36). *In the same vein, one can evoke Aubenque (1980), Harkis (2004), and Romilly (1971). It is claimed, however, that unlimited equity would destroy legal certainty, because it could put legislation on a secondary plane, to the extent that the judge had unbridled decision-making power (PERELMAN, 1972, p. 9-80). An excessively formal justice that excludes any decision of the judge, and which in theory would work without him, is as inadequate as an excessively concrete justice that, in the name of equity, could lead to a justice without legislation.*

Therefore, justice is neither in the excess of equity nor in the rigidity of the application of the law. If one fails by excess, the other, by lack. It can be said, then, that the median is the appropriate place for the practice of *epieikeia*. For this reason, with Cournarie (2007, p. 43), it is stated that laws order social life for the common good and justice, but left to themselves they cannot fully accomplish these things. For this reason, "they have recourse to a higher form of justice that is also their primary source. It is legal justice, that is, the law in view of the just, that recommends its overcoming in equity" (COURNARIE, 2007, p. 43). Therefore, it is up to the operator of the law to promote the legal and equitable that is superior to him. Listen to Aristotle:

It is seen, therefore, what the equitable and the just are, and what kind of just is preferable; and in this way one can also perceive what an equitable man is: he is one who, in his decisions and actions, knows how to depart from strict justice when it presents inconveniences, and who, always relying on the law, knows how to soften rigor. This habit or disposition of the spirit is precisely equity: it is a type of justice, or a habit that does not really differ from justice (ARISTOTLE, 1856, V, 10, 1137 b, 34; 1138 a, 5).

Equity is directly related to prudence, because prudence is the ability of the legal operator to raise the central variables of a legal fact in its relationship with legal justice and equitable fairness and only decide after the legal and social implications of the case are clear and help in decision-making (AUBENQUE, 1980, p. 147-157). This complex operation enables the emergence of refined legal rationality proper to the construction of justice.

The Aristotelian analysis of equity in relation to prudence is threefold and can be made from three key words: *sunesis*, *gnômê* and *eubulia*. They can be understood as critical instances that belong to the equanimous and *phony* intelligence. The first confers on intelligence understanding, sagacity, and cunning, that is, the ability to know something beyond its appearances. The second gives him a critical understanding of the situation, while the third gives him the ability to foresee causes and consequences and, therefore, is able to advise.

In this line, one can refer to Velley: "prudence is '*nomothetic*' or '*dikastique*' – legislative or judicial; that is why the Romans will speak of jurisprudence" (1968, p. 54). The *phronimo* will be the one who has the wisdom to decide practical things. We refer to Aristotle: "prudence is a disposition [*hexis*], accompanied by right intelligence [*ortho logos*], capable of acting in the sphere of what is good or bad for the human being" (ARISTOTLE, 1856, VI, 5, 1140 b, 20). If an example of a *phronym* is requested, Aristotle points to Pericles (ARISTOTLE, 1856, VI, 5, 1140 b, 7), elected by the Athenian people, the executive commander of Athens for thirty consecutive years, from 459 to 429 BC.

Φρόνησις -*phronesis*-, that is, prudence, is therefore the virtue of the soul's faculty of discernment in the sphere of the contingent and not in the sphere of the necessary or the universal. For this reason, it is a practical virtue as opposed to *poiesis*, which is linked to the arts and techniques. It can be said, then, that prudence indicates a typically preventive rationality, inquiring into the best decision in the face of the praxiological demands of social life. It is an ability and a power that is capable of taking things in the right direction due to the instrumental capacity to ration, always seeking to adapt the best means to the ends. Therefore, it is the power of intelligence to choose the right means, as circumstances vary and are unpredictable. It is, therefore, a rational faculty essentially linked to the contingency of the world, especially the cultural one.

Prudence is useful for universal and particular objects, so it requires the experience that age brings (ARISTOTLE, 1856, V, 6, 1142a, 5-10). While prudence is a dianoetic virtue, that is, of the soul; Equity is linked to the realm of ethical virtue. One is potential intelligence and the other is practical intelligence. Both, however, are necessary to the consummation of justice. If the importance of the judge for the effectiveness of justice is recognized, the importance of equity and prudence for legal activity must be recognized.

When one thinks about the relationship between equity and prudence in the functioning of the legislative, executive and judiciary, it can be said without exaggeration that they make up the legislation itself and the political functioning of the city itself (ARISTOTLE, 1856, V, 6, 1141 b, 20). Therefore, it is not possible to be a good man without prudence and, on the contrary, to be prudent without moral virtue. Prudence makes it possible to manage one's passions in accordance with the communitarian ethos. From there, one can affirm its dianoetic condition, that is, a competence proper to the rationality of the soul in order to act in each circumstance in an adequate way.

The prudent person is not a passive applicator of a legal syllogism, that is, given case x, law y follows and therefore its application. He does not apply the universal rules to particular cases because, even if he sticks to the legal rules, the prudent knows the distance of the law, in certain cases, from the situation *under examination*. Therefore, there is no fixed, stable measure that is the limit of legal rationality, rather, it is the equitable and prudent legal intelligence that is the *logos* of the law and the real possibility of doing justice in the city.

Therefore, it can be said that the equitable man is the one who judges well and who does not enslave himself to the positivist logic, although he holds it in high esteem. Rather, it is his concern to judge according to the truth, that is, equitably. For this reason, this man does not apply the law mechanically, but allows himself to penetrate the sensible and the singular with a more 'reasonable' reason than instrumental reason (AUBENQUE, 1980, p. 152). Thus,

the judge becomes a kind of "living justice" (ARISTOTLE, 1856 [B], I, 13, 1374a, 28-29), that is, equity, in addition to making justice work fairly, also allows him to perfect himself precisely by letting each case he judges speak for itself (COLOUBARITSIS, 1985, p. 136). Thus, even if there is an effort to subsume a specific legal case to the law, the former, due to its particularities, always escapes this effort in one way or another. This is the opportunity for equity and the only possibility of doing justice. It is therefore a matter of letting the *kairos* that the case under trial evokes count. Tordesillas contributes to the clarity of the issue:

In the very exercise of equity, the understanding of the circumstances and the intelligence of the situation are manifested, extracting the traces of constancy (in most cases, most frequently) in the plurality of singularities, which is why, as we have seen, equity is aligned with discernment and *kairos*. The convergence of all these points only occurs in situations of exception, in a certain sense, all situations are exceptional, on occasions whose judicial form is presented as "occasional justice" or equity, in judgments that require improvisation with constancy and regularity on each occasion. Situation, constancy, occasion, discernment, judgment, opportunity, contingency, deliberation, the elements of a *kaironomy* are now established (TORDESILLAS, 2004, p. 91).

Therefore, it can be affirmed, with Michon (2011, p. 16), that the *Aristotelian epieikeia* sensitizes and refines the legal conscience to the practical dimension of laws. It is the means to the just and the good, and helps to avoid injustice when the particular law is unfavorable to the cause of justice. Only in this case, it is advisable to seek support in the universal law, the *agraphoi nomoi*, to correct the limit of the law (SANCHO ROCHER, 2007, p. 147). Thus, it can be said that complete equity corrects and humanizes the law (TUNC, 2011). This means that the city, when it comes to justice, is always in search of $\square\square\square\square\square\square\square\square\square\square\square\square$ - *to aristo telos*, that is, in search of the best end, which is actually non-end because it is always an unfinished task (MESQUITA, 2005, p.121). Therefore, whenever justice threatens to slip into injustice, it is appropriate to cry out for *epieikeia*.

The articulation between ethics, subjectivity and legal normativity proposed by Aristotle also allows for a critical dialogue with contemporary approaches that problematize the modes of constitution of the subject and the exercise of power. Michel Foucault, when analyzing the practices of subjectivation, highlights that the ethical formation of individuals is inextricably linked to normative and institutional devices (FOUCAULT, 2010). In the legal field, Boaventura de Sousa Santos draws attention to the tension between legality and legitimacy, especially in contexts of social pluralism, in which the effectiveness of the law depends on its ability to dialogue with socially rooted practices and values (SANTOS, 2007). These contemporary perspectives reinforce the relevance of Aristotelian reflection by showing that law is only fully realized when integrated with the ethical and social practices that shape subjectivity.

The reading proposed in this article allows, therefore, to understand law as a situated social practice, rooted in subjective dispositions and historical forms of collective life. By articulating ethics, subjectivity, and normativity, Aristotle offers a conceptual model capable of illuminating contemporary tensions between legality, legitimacy, and effectiveness of law, especially in contexts marked by moral pluralism and the weakening of the common ethos.

5 CONCLUSION

The analysis developed throughout this article allowed us to demonstrate that, in Book V of the *Nicomachean Ethics*, Aristotle conceives justice as a reality that is not exhausted in the exteriority of the legal norm, but that is realized in the continuous articulation between law, virtue and ethical formation of the subject. By examining the triads *nomos–hexis–hybris*, *areté–diké–adikia* and *dikaiosynē–dikaion–dikaios*, it became evident that law, for the philosopher, only achieves legitimacy and efficacy when it finds correspondence in the subjective dispositions constituted within the communitarian ethos. Aristotelian justice, in this sense, is inseparable from the education of character and the exercise of prudence.

The study showed that *nomos* does not act as a merely coercive instance, but as a normative expression of a historically sedimented ethical experience. Its effectiveness depends on the formation of habits (*hexis*) capable of guiding the passions and containing immeasurability (*hybris*), revealing that legal normativity presupposes a subjectivity previously educated for the just. Thus, the law does not replace virtue, but presupposes it, and the absence of this ethical mediation compromises both the justice of the norms and their social reception.

By analyzing the *areté–diké–adikia triad*, it was shown that justice, in Aristotle, is simultaneously a virtue of the character and regulative principle of social relations. Injustice does not stem only from the formal transgression of the law, but from vicious subjective dispositions that produce inequality and break the community order. In this way, the opposition between justice and injustice illuminates the ethical dimension underlying legal practices, reinforcing the idea that law cannot be adequately understood without reference to the moral formation of agents.

The investigation of the *dikaiosynē–dikaion–dikaios triad* has made it possible, in turn, to understand the role of judicial institutions and prudential judgment in the realization of justice. Equity appears as a decisive element for the mediation between the generality of the law and the singularity of concrete cases, attributing to the judge an ethical responsibility that goes beyond the mechanical application of the norm. At this point, the subjectivity of the

judge, far from being an obstacle to justice, constitutes a condition for its realization, as long as it is guided by prudence and commitment to the common good.

As a theoretical contribution, it is argued that the reading of Book V of *the Nicomachean Ethics* allows us to critically rethink contemporary conceptions of law that dissociate legality and ethical formation. By evidencing the mutual implication between legal normativity and moral subjectivity, Aristotelian reflection offers relevant subsidies for current debates on the legitimacy of norms, institutional rationality, civic education, and public ethics. In contexts marked by crises of confidence in institutions and difficulties in the effectiveness of law, this perspective proves to be particularly fruitful.

Finally, the study paves the way for future investigations that deepen the dialogue between Aristotelian practical philosophy and contemporary approaches to legal theory, legal sociology, and critical human geography, especially with regard to the relationship between norms, social practices, and the formation of subjects in specific historical and territorial contexts. By recovering the centrality of subjectivity in the realization of justice, Aristotle's thought is not only historically relevant, but conceptually current for understanding the legal and social challenges of the present.

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